145-512

RECORD, CASE No. 13,532.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 349.

GEORGE E. DOWLING, PLAINTIFF IN ERROR,

vs.

THE NATIONAL EXCHANGE BANK OF BOSTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

FILED APRIL 8, 1889.

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1 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division, of the March Term, A. D. 1883.

WESTERN DISTRICT OF MICHIGAN, *ss:*

The National Exchange Bank of Boston, who is a citizen of the State of Massachusetts, by Champlin & More, its attorneys, filing this its declaration as commencement of suit, complains of Frank H. White, George E. Dowling, Thomas W. Ferry, and Edward P. Ferry, who are citizens of the State of Michigan, of a plea of trespass on the case upon promises—

For that whereas the said defendants Frank H. White, George E. Dowling, and Edward P. Ferry, before and at the time of the making of the several promises hereinafter mentioned and on, to wit, the seventeenth day of October, 1882, were copartners doing business under the firm name and style of F. H. White & Co.;

And for that whereas the said defendants Thomas W. Ferry and Edward P. Ferry, before and at the time of the making of the several promises hereinafter mentioned and on, to wit, the said seventeenth day of October, 1882, were copartners doing business under and by the firm name and style of Ferry & Bro.;

And whereas also the defendants, on the first day of March, A. D. 1883, were indebted to the plaintiff in the sum of ten thousand dollars for the price and value of goods then sold and delivered by the plaintiff to the defendants at their request;

And in a like sum for the price and value of work then done and materials for the same provided by the plaintiff for the defendants at their request;

And in a like sum for money then lent by the plaintiff to the defendants at their request;

2 And in a like sum for money then paid by the plaintiff for the defendants at their request;

And in a like sum for money then received by the defendants for the use of the plaintiff;

And in a like sum for money found to be due from the defendants to the plaintiff on an account stated between them;

And whereas the defendant- afterwards and on the day and year aforesaid, in consideration of the premises respectively, then promised the plaintiff to pay it the said several last-mentioned moneys respectively on request, yet they have disregarded their promises and have not paid any of the said moneys or any part thereof, to the plaintiff's damage of ten thousand dollars; and thereupon it brings suit, etc.

CHAMPLIN & MORE,
Plaintiff's Attorneys.

To the within-named defendants:

Take notice that on the trial of the above cause plaintiff, under

the money counts, will give in evidence a certain promissory note, a copy of which is given below; which note constitutes plaintiff's sole cause of action in this cause.

CHAMPLIN & MORE,
Plaintiff's Att'ys.

"$5,288.75. MONTAGUE, MICH., *Oct. 17th*, 1882.

"Four months after date we promise to pay to the order of Ferry & Bro. fifty-two hundred eighty-eight & $\frac{75}{100}$ dollars at the National Exchange bank, Boston, Mass., value received.

"F. H. WHITE & CO."

Which said note is endorsed as follows: "Ferry & Bro."

We hereby acknowledge ourselves to be security for all costs for which the plaintiff may become liable in this cause.

CHAMPLIN & MORE.

2½ [Endorsed:] No. 1828. United States circuit court. The National Exchange Bank *vs.* Frank H. White *et al.* *Narr.* To the within-named defendant-: Take notice that on filing a declaration in this cause (of which the within is a true copy) as commencement of this suit a rule was entered in the book of common rules kept by the clerk of said court in his office, in the city of Grand Rapids, requiring you to plead to said declaration within twenty days after the service of a copy thereof and notice of said rule, or judgment, etc. Yours, etc., Champlin & More, attorneys for pl'ff. Filed March 12, 1883. Henry M. Hinsdill, clerk.

3 The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division, March Term, A. D. 1883.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY.

Dated MARCH 12, 1883.

In this cause, on filing declaration as commencement of suit, and on motion of Champlin & More, attorneys for plaintiff—

Ordered that the defendants herein appear and plead to said declaration within twenty days after service on them of a copy thereof, together with notice of this rule, or judgment, &c.

CHAMPLIN & MORE,
Attorneys for Plaintiff.

4 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
GEORGE E. DOWLING, Impleaded with FRANK H. WHITE, EDWARD P. FERRY, and THOMAS W. FERRY.

And the said defendant, George E. Dowling, comes and demands a trial of the matters set forth in the declaration of the said plaintiff.

M. BROWN,
Att'y for Def't George E. Dowling.

4½ [Endorsed:] No. 1828. United States of America. The circuit court of the United States for the sixth circuit and western district of Michigan, southern division. The National Exchange Bank of Boston *vs.* George E. Dowling, impleaded with Frank H. White, Edward P. Ferry, and Thomas W. Ferry. Def't'-plea, gen'l issue. Filed March 29th, 1883. H. M. Hinsdill, clerk. M. Brown, Big Rapids, Mich., att'y for def't George E. Dowling.

5 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
GEORGE E. DOWLING, Impleaded with FRANK H. WHITE, THOMAS W. FERRY, and EDWARD P. FERRY.

WESTERN DISTRICT OF MICHIGAN, *Southern Division*, } *ss:*

George E. Dowling, being duly sworn, deposes and says that he is one of the defendants in this cause. Deponent says, further, that on the 17th day of October, A. D. 1882, he was and still is a member of the copartnership firm of F. H. White & Co., of Montague, Michigan; that said firm was at said time and still is composed of Edward P. Ferry, Frank H. White, and this deponent as copartners. Deponent says, further, that he never executed the promissory note a copy of which was served upon him with the plaintiff's declaration in this cause and which the said plaintiff has notified this deponent constitutes the sole cause of action herein; that the signature thereto is not in the handwriting of this deponent, and that said promissory note was not executed by any person having authority to bind this deponent or to bind the said defendants, Edward P. Ferry, Frank H. White, and this deponent jointly upon said promissory note.

And further this deponent says not.

GEORGE E. DOWLING.

Subscribed and sworn to before me this 27th day of March, A. D. 1883.

H. H. TERWILLIGER,
Notary Public in and for Muskegon Co., Mich.

[Endorsed:] No. 1828. United States of America. The circuit court of the United States for the western district of Michigan, southern division. The National Exchange Bank of Boston *vs.* George E. Dowling, impleaded with Frank H. White, Edward P. Ferry, and Thomas W. Ferry. Affidavit denying execution of note. Filed March 29th, '83. H. M. Hinsdill, clerk. M. Brown, att'y for def't George E. Dowling.

6 The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON, Plaintiff,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY, Defendants.

And now come the said defendants Frank H. White and Edward P. Ferry and demand a trial of the matters set forth in the plaintiff's declaration.

April 2d, 1883.

SMITH, NIMS, HOYT & ERWIN,
Att'ys for Def'ts Frank H. White and Edward P. Ferry.

[Endorsed:] No. 1828. The circuit court of the United States for the sixth circuit and western district of Michigan, southern division. The National Exchange Bank of Boston, pl'ff, *vs.* Frank H. White *et al.*, def'ts. Plea gen'l issue of def'ts Frank H. White and Edward P. Ferry. Filed April 3rd, 1883. H. M. Hinsdill, clerk. Smith, Nims, Hoyt & Erwin, att'ys for def'ts Frank H. White and Edward P. Ferry.

7 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division, of the March Term, A. D. 1883.

WESTERN DISTRICT OF MICHIGAN, *ss:*

The National Exchange Bank of Boston, who is a citizen of the State of Massachusetts, by Champlin & More, its attorneys, filing this its declaration as commencement of suit, complains of Frank H. White, George E. Dowling, Thomas W. Ferry, and Edward P. Ferry, who are citizens of the State of Michigan, of a plea of trespass on the case upon promises—

For that whereas the said defendants Frank H. White, George E. Dowling, and Edward P. Ferry, before and at the time of making

the several promises hereinafter mentioned and on, to wit, the seventeenth day of October, 1882, were copartners doing business under the firm name and style of F. H. White & Co.;

And for that whereas the said defendants Thomas W. Ferry and Edward P. Ferry, before and at the time of the making of the several promises hereinafter mentioned and on, to wit, the said seventeenth day of October, 1882, were copartners doing business under and by the firm name and style of Ferry & Bro.;

And whereas also the defendants, on the first day of March, A. D., 1883, were indebted to the plaintiff in the sum of ten thousand dollars for the price and value of goods then sold and delivered by the plaintiff to the defendants at their request;

And in a like sum for the price and value of work then done and materials for the same provided by the plaintiff for the defendants at their request;

And in a like sum for money then lent by the plaintiff to the defendants at their request;

8 And in a like sum for money then paid by the plaintiff for the defendants at their request;

And in a like sum for money then received by the defendants for the use of the plaintiff;

And in a like sum for money found to be due from the defendants to the plaintiff on an account stated between them;

And whereas the defendants afterwards and on the day and year aforesaid, in consideration of the premises respectively, then promised the plaintiff to pay it the said several last-mentioned moneys respectively on request, yet they have disregarded their promises and have not paid any of the said moneys or any part thereof, to the plaintiff's damage of ten thousand dollars; and thereupon it brings suit, etc.

CHAMPLIN & MORE,
Plaintiff's Attorneys.

To the within-named defendants:

Take notice that on the trial of the above cause plaintiff, under the money counts, will give in evidence a certain promissory note, a copy of which is given below; which note constitutes plaintiff's sole cause of action in this cause.

CHAMPLIN & MORE,
Pl'ff's Att'ys.

"$5,288.75. MONTAGUE, MICH., *Oct. 17th*, 1882.

"Four months after date we promise to pay to the order of Ferry & Bro. fifty-two hundred eighty-eight $\frac{75}{100}$ dollars at the National Exchange bank, Boston, Mass., value received.

"F. H. WHITE & CO."

Which said note is endorsed as follows: "Ferry & Bro."

WESTERN DISTRICT OF MICHIGAN, *ss:*

I hereby certify and return that on the 13th day of March, A. D.

1883, I served on Frank H. White and George E. Dowling,
9 at Montague, in said district, and on the 19th day of March, A. D. 1883, on Edward P. Ferry, at Grand Haven, in said district, the within-named defendants, by delivering to each of them a true copy of the within declaration, together with a copy of the rule to plead endorsed thereon, as is hereon endorsed.

JAMES MONROE,
U. S. Marshal,
By R. WILLIAMS, *Deputy.*

3 services	6 00
3 copies	1 50
102 miles	6 12

[Endorsed:] No. 1828. United States circuit court. The National Exchange Bank *vs.* Frank H. White *et al.* Copy *narr.* To the within-named defendant: Take notice that on filing a declaration in this cause (of which the within is a true copy), as commencement of this suit, a rule was entered in the book of common rules, kept by the clerk of said court in his office, in the city of Grand Rapids, requiring you to plead to said declaration within twenty days after the service of a copy thereof and notice of said rule, or judgment, etc. Yours, etc., Champlin & Moore, attorneys for pl'ff. Filed April 13, 1883. Henry M. Hinsdill, clerk.

10 The Circuit Court of the United States for the Western District of Michigan, Southern Division.

EDWARD P. FERRY, FRANK H. WHITE, GEORGE E. DOWLING, and THOMAS W. FERRY
ads.
THE NATIONAL EXCHANGE BANK OF BOSTON.

And the said defendant, Edward P. Ferry, by T. J. O'Brien, his attorney, comes and demands a trial of the matters set forth in the declaration of the said plaintiff.

T. J. O'BRIEN,
Attorney for Def't E. P. Ferry.

[Endorsed:] No. 1828. United States circuit court, western dist. Mich. The Nat'l Exchange Bank of Boston *vs.* Frank H. White *et al.* Plea of def't E. P. Ferry. Filed May 21, 1883. Henry M Hinsdill, clerk. T. J. O'Brien, att'y for def't E. P. Ferry.

11 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } No. 1.

We hereby consent that John E. More be substituted in our place as attorney for the plaintiff in this cause.

Dated Grand Rapids, December 31, 1883.

CHAMPLIN & MORE,
Attorneys for Plaintiff.

[Endorsed:] No. 1828. United States circuit court for the western district of Michigan, southern division. The National Exchange Bank of Boston *vs.* Frank H. White *et al.* No. 1. Consent to substitution. Filed Jan'y 4, '84. H. M. Hinsdill, clerk. Champlin & More, att'ys for plaintiff.

12 October Term, A. D. 1883.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } No. 1.

Dated JANUARY 4, 1884.

In this cause, on filing the written consent of Champlin & More thereto and on their motion—

Ordered that John E. More be, and he is hereby, substituted in the place of said Champlin & More as attorneys for plaintiff herein.

CHAMPLIN & MORE,
Att'ys for Plaintiff.

13 [Endorsed:] No. 1828. U. S. circuit court, western district of Michigan, southern division. The National Exchange Bank of Boston, plaintiff, *vs.* Frank H. White, George E. Dowling, Thomas W. Ferry, and Edward P. Ferry, defendants. No. 1. Note of issue. Issue joined as to White Apr. 3, '83; as to Dowling, Mar. 30, '83; as to E. P. Ferry, May 21, '83. Cause of action, assumpsit. John E. More, attorney for plaintiff. Smith, Nims, Hoyt & Erwin, for White; M. Brown, for Dowling; T. J. O'Brien, for E. P. Ferry, attorney for defendant. To Henry M. Hinsdill, clerk U. S. court, western district Michigan: Please place on calendar for March term, 1884. Yours, John E. More, attorney for plaintiff. Filed Feb'y 12, 1884. H. M. Hinsdill, cl'k.

14 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 1.

SIRS: Please take notice that the depositions of John S. Learoyd and George O. Sawyer, of the city of Boston, Suffolk county, State of Massachusetts, will be taken on behalf of the plaintiff in this cause, before Henry G. Nichols, a notary public, at his office, in said city of Boston, said office being situated at number forty (40) Water street, on the fourth day of March, A. D. 1884, at ten o'clock in the forenoon of that day, at which time and place you are at liberty to appear and put such questions to said witnesses as you may see fit.

Dated Grand Rapids, Feb. 16th, 1884.

Yours, &c.,

JOHN E. MORE,
Att'y for Plaintiff.

To T. J. O'Brien, Esq., att'y for def't E. P. Ferry; Messrs. Smith, Nims, Hoyt & Erwin, att'ys for def't White; M. Brown, Esq., att'y for def't Dowling.

15 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 1.

WESTERN DISTRICT OF MICHIGAN, *ss:*

John E. More, of the city of Grand Rapids, in said district, being duly sworn, says that he is the attorney for the plaintiff in this cause; that the above-entitled suit is a civil cause now depending in said court, and that said cause is now at issue; that John S. Learoyd and George O. Sawyer are material witnesses for plaintiff in this cause, and both reside at the city of Boston, county of Suffolk and State of Massachusetts, and that said city of Boston is at a greater distance than one hundred miles from the city of Grand Rapids, in said district, the place of trial of this cause.

JOHN E. MORE.

Subscribed and sworn to before me this 16th day of February, 1884.

CHAS. M. WILSON,
Notary Public, Kent County, Michigan.

UNITED STATES OF AMERICA, *Western District of Michigan,* } ss:

Charles M. Wilson, of the city of Grand Rapids, in said district, being duly sworn, says that on the eighteenth day of February, A. D. 1884, he served a notice, of which the attached notice is a true copy, together with a true copy of the annexed affidavit, on T. J. O'Brien, Esq., attorney for defendant E. P. Ferry in the within-entitled cause, by giving the same to him personally; that on the same day he served a notice, of which the attached notice is
16 a true copy, together with a copy of the attached affidavit, on Messrs. Smith, Nims, Hoyt & Erwin, attorneys for defendant White in the within-entitled cause, by depositing the same in a United States letter-box in said city of Grand Rapids, enclosed in a envelope, postage fully prepaid, addressed to said Smith, Nims, Hoyt & Erwin, at Muskegon, Michigan, that being the place of their residence and business; that on the same day he served a notice, of which the attached notice is a true copy, together with a true copy of the attached affidavit, on M. Brown, Esq., attorney for defendant Dowling in the within-entitled cause, by depositing the same in a United States letter-box at said city of Grand Rapids, enclosed in an envelope, postage fully prepaid, addressed to said Brown, at Big Rapids, Michigan, that being the residence of said Brown.

CHARLES M. WILSON.

Subscribed and sworn to before me this 18th day of February, A. D. 1884.

[NOTARIAL SEAL.]

WALTER H. HUGHES,
Notary Public, Kent County, Michigan.

UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 1.

Stipulated that the time for taking the depositions in the above-entitled cause of John S. Learoyd and George O. Sawyer, of the city of Boston, Suffolk county, State of Massachusetts, which
17 has heretofore been noticed to be taken on the 4th day of March next, before Henry G. Nichols, at his office, in said city of Boston, be, and the same is hereby, postponed to the 25th day of March aforesaid at the same hour and place.

Dated Feb'y 26th, 1884.

JOHN E. MORE, *Att'y for Pl'ff.*
T. J. O'BRIEN,
Att'y for Def't E. P. Ferry.
M. BROWN, *Att'y for Def't Dowling.*
SMITH, NIMS, HOYT & ERWIN,
Att'ys for Def't White.

UNITED STATES OF AMERICA.

DISTRICT OF MASSACHUSETTS, } ss:
State of Massachusetts, County of Suffolk, }

Be it remembered that on this 25th day of March, A. D. 1884, by adjournment by stipulation hereto annexed, I, Henry G. Nichols, a notary public in and for said county of Suffolk, did call and cause to be personally before me, at my office, at number forty (40) Water street, in the city of Boston, in said district, county, and State, John S. Learoyd and George O. Sawyer, Jr., both of the city of Boston aforesaid, to testify and the truth say on the part and behalf of the plaintiff in a certain suit or matter in controversy now depending and undetermined in the circuit court of the United States for the sixth circuit and western district of Michigan, southern division, at the city of Grand Rapids, in said western district of Michigan, wherein The National Exchange Bank of Boston, Massachusetts, is plaintiff and Frank H. White, George E. Dowling, Edward P. Ferry, and Thomas W. Ferry are defendants (the cause being
18 number one (1) of the title just recited), and it appearing by the affidavit which is hereto attached that reasonable notice of the taking of these depositions has been duly served on the attorneys for the defendants White, Dowling, and E. P. Ferry——

(Counsel for defendant Dowling objects to taking deposition before a notary public, claiming that it should be taken before a judicial officer.)

And the said JOHN S. LEAROYD, being about the age of fifty, and having by me first been cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, being examined upon oral interrogatories by B. F. BROOKS, Esq., appearing on behalf of the said plaintiff, did thereupon depose, testify, and say as follows, viz:

Int. 1. What is your name, age, residence, and occupation?

Answer. John S. Learoyd; fifty-one; residence. Danvers, Mass.; occupation, cashier of the Nat'l Exchange — of Boston.

Int. 2. How long have you been cashier of the National Exchange Bank of Boston?

Ans. A little over three years.

Int. 3. What three years?

Ans. 1881, 1882, and 1883. I think I was elected October, 1880.

Int. 4. Please examine the letter now shown you, addressed to you, dated October 18th, 1882 (letter produced, marked Exhibit 1, and to be annexed to this deposition), and state when, if ever, you received it and how it came to your possession.

Ans. I should say, by the marks upon it, that it was received October 21st, 1882. These letters come by morning mail and are opened and handed to me for discount of the enclosure. I don't open the letters.

Int. 5. Please state when, if ever, you received the note
19 mentioned in said letter; and, if so, what you did with or in respect to it and when.

Ans. I received the note October 21st, 1882. I discounted the note the same day.

Int. 6. For whom were you acting in discounting the note?

Ans. I suppose that I was acting for the bank. I don't know just what you mean by that question.

Int. 7. In what capacity were you acting in discounting the note?

Ans. I was acting as discount clerk, which office I fill besides that of cashier.

Int. 8. Please state what was done in respect of the proceeds of the discount.

Answer. The proceeds of the discount were passed to the credit of Ferry & Brother.

Int. 9. When?

Ans. The same day.

Int. 10. Please state whether Ferry & Brother were advised of the discount and on the passing the proceeds thereof to their credit by the bank. If so, how and when?

Answer. They were advised of this discount October 21st, 1882, and the proceeds were passed to their credit. They were advised by letter, of which a press copy was taken on our books.

(Answer objected to by defendant Dowling's counsel on the ground that it is incompetent, as showing contents of a letter not produced, and no notice to produce it has been given to defendant Dowling or his attorney.)

Int. 11. Have you said press copy of said letter before you?

Answer. I have.

Int. 12. Will you please produce the same and annex the same to your deposition?

Ans. I do.

(Press copy produced and marked Exhibit 2 and to be annexed to this deposition.)

Int. 13. Who is E. L. Tead, and what is his relation to the National Exchange Bank of Boston, and what was it in October, 1882?

Ans. He is now president of the bank and was president at that time.

Int. 14. Did you ever see him write his name and do you know his signature?

Ans. I have and I do.

Int. 15. Please state whether the signature to said letter marked Exhibit "2" is known to you and whose signature it is.

Answer. It is known to me. It is the signature of the said E. L. Tead.

Int. 16. Please state whether you cut said press copy of said letter from any book. If so, whose book, and when and where was it cut out of the same?

Answer. I did. I cut if from the letter book belonging to the National Exchange Bank of Boston, entitled letters No. 4. I cut it out March 25th, 1884, in office of Henry G. Nichols, the magistrate.

Int. 17. Please state whether it was done in the presence of the magistrate and during the taking of your deposition.

Ans. It was.

Int. 18. Please describe said note, giving the names of promissors and endorsers thereon and the amount and time thereof.

Ans. Name of promissor was F. H. White & Co.; name of endorser was Ferry & Brother; amount was $5,288.75. It was dated October 17th, 1882; time, four months.

(Defendant Dowling's counsel moves to strike out the last answer of the witness because the same is incompetent, the witness
21 giving the contents of the note in this suit without producing such note.)

Int. 19. Have you given in you- last answer a full description of the note you discounted?

(Objected to by defendant Dowling's counsel as being incompetent.)

Answer. I have given a description of name of promissors, endorsers, amount, date, and time.

Int. 20. What was the amount which was passed to the credit of Ferry & Brother as the proceeds of the discount of said note?

(Defendant Dowling's counsel objects to question as being incompetent because it calls for contents of books of plaintiff without producing them.)

Answer. $5,182.97.

Int. 21. State whether you personally made up the discount of the note and whether you know, independently of the books, what the amount of the discount was; and, if so, please state what the amount was.

(Objected to by defendant Dowling's counsel as being immaterial and also incompetent.)

Ans. I did; and I do know, independently of the books, what the amount was. The amount was ($5,182.97) fifty-one hundred eighty-two & $\frac{97}{100}$ dollars.

Int. 22. What was the rate of the discount?

Ans. Six per cent.

Int. 23. State whether there is anything irregular or out of the ordinary course of business in the discount of this note. If so, state what.

Answer. There was nothing.

Cross-examination:

(Defendant Dowling's counsel objects to the introduction of Exhibit "2" in evidence because the same is a copy and the original has neither been accounted for nor notice to produce it served.)
22 (Defendant Dowling's counsel objects to Plaintiff's Exhibit "1" and moves to strike the same from the record for

the reason that it appears to have been written by one Thompson and not by any of the parties to this suit.)

JOHN S. LEAROYD.

And at this point I adjourned the hearing until two o'clock p. m. of the same day, and at this last-named time and place, upon being re-examined upon oral interrogatories by the said B. F. BROOKS, Esq., did thereupon depose, testify, and say as follows:

Redirect Int. 1. Please examine the paper now shown you and marked Exhibit "3" and state whether you ever saw it before; if so, when, in whose handwriting it is, and what, if anything, you did with it.

Answer. I have seen it before. It is in my own handwriting. I saw it October 21st, 1882, and on that day handed it to the book-keeper.

Red. Int. 2. Who was the book-keeper to whom you handed it?

Ans. George O. Sawyer, Junior.

(Paper produced and put in evidence and marked Exhibit "3" and to be annexed to this deposition.)

(Defendant Dowling's counsel objects to the paper as immaterial, incompetent, and irrelevant.)

Cross-examination:

And being cross-examined upon oral cross-interrogatories by M. BROWN, Esq., appearing on behalf of said defendant Dowling, did thereupon depose, testify, and say as follows:

X Int. 1. What do the figures in pencil in the corner of "Exhibit 3" indicate?

Ans. They are the addition of two or more tickets of the same—what we call discount tickets.

X Int. 2. When were those figures made on that exhibit?

Ans. On the same day, October 21st, 1882.

X Int. 3. What is the amount of the figures in pencil on "Exhibit 3"?

23 Ans. ($13,053.47) thirteen thousand and fifty-three & $\frac{47}{100}$ dollars.

X Int. 4. Were the other discounts that you have alluded to made the same day that this note in suit was discounted?

Answer. The other notes were discounted the same day.

X Int. 5. Were the three notes which you have alluded to all the notes that were discounted for Ferry & Brother on the 21st of October, 1882?

Answer. There was but one note discounted for Ferry & Brother on that day.

X Int. 6. Was that the note in this suit?

Answer. It was.

X Int. 7. Who were the other discounts, which you describe as being two or more, made for?

Answer. I couldn't tell without reference to my books.

X Int. 8. How do they come to be included and minuted upon "Exhibit 3"?

Answer. I shall have to explain the whole process of discounting. I may have notes to discount for one or more parties. I make the discount, make out a ticket for each party, and add the several amounts together for convenience in passing them through the teller's books. The addition of those several tickets is always placed on the upper ticket, and this ticket was the upper ticket.

X Int. 9. Did the plaintiff, to your knowledge, have any correspondence with the defendants or either of them in relation to discounts before discounting the note upon which this suit is brought?

Ans. I should say no, because I have nothing to do with the correspondence; not to my knowledge.

X Int. 10. What officer of the plaintiff attends to the correspondence?

Answer. The assistant cashier, Mr. F. R. Cordeley, has charge of the correspondence, and I think he had charge of it in October, 1882, and has had charge of it ever since.

24 X Int. 11. Can you explain how the note upon which this suit is brought came to be made for the sum of $5,288.75?

Answer. I cannot.

X Int. 12. Whether the plaintiff had discounted paper for the defendants Ferry & Brother before discounting this note in suit, to your knowledge.

Answer. I presume they had.

X Int. 13. Do you know whether they had or not?

Answer. I couldn't swear to it.

X Int. 14. Have you been informed by any officer of the plaintiff that such was the fact?

Answer. I have not.

X Int. 15. Then why do you say that you presume they have?

Answer. Because they, Ferry & Brother, kept an account there at the bank.

X Int. 16. Was it the custom of the plaintiff to charge Ferry & Brother's paper up to them as it matured?

Answer. I think not.

X Int. 17. How did Ferry & Brother pay their notes discounted by the plaintiff when they matured?

Answer. I don't remember.

X Int. 18. Has the plaintiff, to your knowledge, any checks or other vouchers in its possession drawn by Ferry & Brother?

Answer. To my knowledge they have not.

X Int. 19. What officer or employé of the plaintiff has charge of writing up the books of the customers of the bank and delivering to such customers vouchers for money when drawn out? Give his name and how long he has been in the employ of the plaintiff.

Answer. George O. Sawyer, Junior; book-keeper; in employ of bank as book-keeper three years and a half.

25 X Int. 20. State, if you know, when Ferry & Brother commenced doing business with the plaintiff?

Answer. I don't know.

X Int. 21. How long have you been in the employ of the plaintiff as cashier continuously?

Answer. Three and a half years, about.

X Int. 22. Has Ferry & Brother been customers of the plaintiff during that time?

Answer. Some portion of the time.

X Int. 23. When did they commence doing business with the plaintiff during that time?

Answer. I do not know when they began business with the bank.

X Int. 24. Did *whe* plaintiff have any of Ferry & Brother's notes at the time you discounted the note in suit?

Answer. I cannot tell without referring to the books.

X Int. 25. Will you please examine the books of the plaintiff and ascertain whether at the time when the note upon which this suit was brought was discounted the plaintiff held other paper made or endorsed by Ferry & Brother, and also whether they held such paper at the time the note in suit matured?

Answer. I will.

At this point I adjourned the hearing until Tuesday, March 26th, 1884, at nine o'clock in the forenoon, at my office, 40 Water St., Boston.

And on March 26th, 1884, at said time and place, the same counsel being present as before, the said JOHN S. LEAROYD, being further cross-examined on oral cross-interrogatories by said M. BROWN, Esq., did depose, testify, and say as follows:

X Int. 26. Have you made the examination indicated in the last question?

Answer. I have not made full examination.

26 X Int. 27. State whether at the time when the note upon which this suit was brought was discounted the plaintiff owned other paper made or endorsed by Ferry & Brother or by either member of that firm, that firm at that time being composed of Edward P. Ferry and Thomas W. Ferry.

Answer. It had paper endorsed by Ferry & Brother, but none to my knowledge made or endorsed by Edward P. Ferry or Thomas W. Ferry individually.

X Int. 28. You may state whether at the time the note upon which this suit was brought was discounted by the plaintiff for Ferry & Brother any other of the paper owned and held by the plaintiff made or endorsed by Ferry & Brother was due or was about to mature?

Answer. A note of F. H. White & Co. for ($5,354 00) fifty-three hundred and fifty-four *hundred* dollars, endorsed by Ferry & Brother, became due October 23rd, 1882.

X Int. 29. Whether any of the proceeds of the note in question in this suit were used to pay that note.

Answer. The proceeds of this note were passed to the credit of Ferry & Brother.

X Int. 30. Was the note that fell due on the 23rd October, 1882, paid; and, if so, by whom?

Answer. I don't know.

And upon being further re-examined upon oral interrogatories by the said B. F. Brooks, Esq, did depose, testify, and say as follows:

Int. 1. What book did you examine for your answer to the 28th cross-interrogatory?

Answer. I examined the books called the maturity book and the discount record.

Int. 2. Is there any entry of the discount of the note of $5,354.00, which you examined to make your answer?

Answer. There is.

27 Int 3. Is that book here?

Ans. It is.

Int. 4. What is the entry?

Answer. October 20–23; No. 111; F. H. White & Co.; Ferry & Bro.; $5,354.00; $107.97; $5,246.03. Paid.

Int. 5. In whose handwriting is that entry?

Answer. In my handwriting.

Int. 6. In the same book is there any entry of the discount of the note in suit in this case; if so, what is that entry?

Answer. There is. It is as follows: February 17–20; No. 197; F. H. White & Co.; Ferry & Bro.; $5,288.75; $105.78; $5,182.97.

Int. 7. State whether the same is in columns in said book and explain the columns in which the different items are placed.

Answer. The first column, in which is Feb'y 17–20, is the date when due; second column, in which is 197, is the record number of the note; the third column, in which is F. H. White & Co., is for the promissor; the fourth and fifth columns, in which is Ferry & Bro., is for the endorser and the person for whom the discount is made; the sixth column, in which is $5,288.75, is for the amount of the note; the seventh column, in which is 105.78, is for the amount of discount; the eighth column, in which is 5,182.97, is for the net amount of the discount.

Int. 8. In the entry of the note for $5,354.00 of F. H. White & Co., endorsed by Ferry & Bro., falling due Oct. 20–23, the end of the entry is the word "paid." In whose handwriting is the word "paid"?

Answer. It is my handwriting.

Int. 9. Please explain your answer in the cross-examination, that you do not know that said note was paid.

Answer. That note came to me in the due course of business as paid, but by whom I don't know, nor how. I don't know

28 what funds were used to pay that note.

JOHN S. LEAROYD.

Note.—The above book, called the Discount Record, was offered by the plaintiff's counsel to be identified by the magistrate and to be offered in evidence at the trial.

Book produced and marked Plaintiff's Book, Exhibit No. 4, and with magistrate's initials and date, M'ch 26, 1884.

EXHIBIT 1, H. G. N. M'ch 25, '84.

Thos. W. Ferry. Edw'd P. Ferry.

Ferry & Bro., manufacturers and dealers in lumber & shingles.

GRAND HAVEN, MICH., *Oct.* 18, 1882.

J. S. Learoyd, Esq., cash'r, Boston.

DEAR SIR: We enclose F. H. White and Co. note at 4 mo., f'm 17, $5,288.75, which please discount and pass proceeds to credit, with advice, and oblige,

Truly yours, FERRY & BRO.
THOMSON.

Ad. (a) 21, '82. D.

5,182.97
.26

29 EXHIBIT 2, H. G. N. M'ch 25, '84.

10, 21, '2.

Messrs. Ferry & Bro., Grand Haven, Mich.

GENTLEMEN: We credit your ac. $5,182.97, proceeds of note F. H. White & Co., $5,288.75, received in your letter of 10 | 18, and discounted @ 6 %.

Yours truly, E. L. TEAD, *P't.*

Exhibit 3, H. G. N. M'ch 25, '84. Oct. 21, '82. Dis., 5,182.97. Ferry Bro.

30 And the said GEORGE O. SAWYER, JR., being about thirty years of age and having by me first been cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, being examined upon oral interrogatories by B. F. BROOKS, Esq., appearing on behalf of said plaintiff, did thereupon depose, testify, and say as follows:

Int. 1. What is your name, age, and occupation?

Answer. George O. Sawyer, Jr.; about thirty, and am book-keeper in the National Exchange Bank of Boston.

Int. 2. How long have you been book-keeper in the Nat'l Exchange Bank of Boston?

Answer. Since Oct. 1st, 1880.

Int. 3. Have you your books of entry here?

Answer. Yes, sir.

Int. 4. State whether or not you made any entry on October 21st, 1882, of any credit to Ferry & Bro.; and, if so, what amount?

(Objected to by defendant Dowling's counsel as being incompetent, calling for the contents of the writing.)

Answer. October 21st, 1882, I made a credit to Ferry & Bro. of $5,182.97.

Int. 5. Have you the book in which the entry is made before you?

Answer. Yes, sir.

Int. 6. What is the entry to which you refer, and in what book is it, and to whom does the book belong?

(Objected to by defendant Dowling's counsel as being incompetent.)

Answer. The entry is $5,182.97, and is for a discount passed to the credit of Ferry & Bro., and it is in the book of balances A. J. No. 10, for 1882, labelled Jan'y, 1882, and the book is the property of the Nat'l Exchange Bank of Boston.

Int. 7. Please examine the entry and state what it is.

31 (Objected to by defendant Dowling's counsel upon the same ground as last question.)

Answer. The entry is as follows, under date Oct. 21st: Ferry & Bro., 5,182.97 dis.

Int. 8. Please examine the paper now shown you, marked "Exhibit 3, H. G. N., March 25, '84," and annexed to deposition of Learoyd, and state what, if anything, you know about the same.

Answer. It is the same form on which the credits to discount are passed to me, and I think it is the ticket from which I made the entry referred to in my last answer.

Int. 9. From whom, if any one, did you receive that ticket? How did it come into your hands, if at all?

Answer. I received it in the regular course of business from the paying teller.

Int. 10. In the course of the business of the bank, how do these tickets come into the hands of the paying teller—from whom?

Answer. From the receiving teller.

Int. 11. And to the receiving teller from whose hands do they come?

Answer. From the cashier.

Int. 12. Do you recollect from whom you received this ticket?

Answer. I have no recollection from whom I received this particular ticket, but from the custom of our business all discount tickets which are credited upon my books are passed to me by the paying teller.

Int. 13. Refreshing your mind by the entry which you referred to in the books, can you state what amount was passed, if anything, to the credit of Ferry & Bro. on the 21st October, 1882?

Answer. $5,182.97 credited them on that day, October 21, '82—proceeds of a discount.

Int. 14. In whose handwriting is that entry?

Answer. In my own.

32 Int. 15. State whether or not it was made in the ordinary course of business of the bank, or how otherwise.

(Objected to by defendant Dowling's counsel as irrelevant and immaterial and leading.)

Answer. It was made in the ordinary course of business.

Int. 16. State whether anything was done by you in respect to said transaction extraordinary or unusual; and, if so, what.

(Objected to as immaterial and irrelevant by defendant Dowling's counsel.)

Answer. Nothing to my knowledge at the present time. I don't remember anything.

Cross-examination:

And upon being cross-examined upon oral cross-interrogatories by M. BROWN, Esq., appearing for the defendant Dowling, did depose, testify, and say as follows:

X Int. 1. Can you tell by reference to your book what balance, if any, Ferry & Bro. had at the close of business on the 21st day of October, 1882, in the hands of the plaintiff? If so, state the amount of such balance.

Answer. Balance to credit of Ferry & Brother on October 21st, 1882, was eight thousand and fourteen & $\frac{37}{100}$ dollars ($8,014.37).

X Int. 2. What was their balance at the close of business on the 22nd day of October, 1882?

Answer. It was Sunday.

X Int. 3. What was their balance at the close of business on October 23rd, 1882?

Answer. Twenty-six hundred and sixty and $\frac{37}{100}$ dollars ($2,660.37).

X Int. 4. What was the balance at the close of business on the 20th October, 1882?

Answer. Twenty-eight hundred and thirty-one $\frac{40}{100}$ dollars $2,831.40).

33. Redirect examination:

And upon being re-examined by said B. F. BROOKS, Esq., upon oral interrogatories did depose, testify, and say as follows:

Int. 1. Do you know anything of said balances mentioned in your answers in X examination except what you find upon your said book of balances?

Answer. No, sir; I do not.

Int. 2. Are said balances entered upon the same line in said book as said entry of discount?

Answer. On same horizontal line.

Int. 3. On the same horizontal line is there any entry of any check of Ferry & Bro.; and, if so, what is it and under what date?

(Objected to by defendant Dowling's counsel as being incompetent.)

Answer. On 23rd day of October there is a check charged—fifty-three hundred and fifty-four dollars ($5,354.00).

And upon being further cross-examined upon oral cross-interrogatories by said M. BROWN, Esq., did depose, testify, and say as as follows:

X Int. 1. State whether the book from which you stated the balances of Ferry & Bro. on the 21st, 23rd, and 20th days of October, 1882, is a book kept by you while in the employ of the plaintiff in the regular course of your employment, and which book was at the time you kept it and now is in the possession of and the property of the plaintiff.

Answer. It is.

And upon being further re-examined upon oral interrogatories by said B. F. BROOKS, Esq., did depose, testify, and say as follows:

Int. 1. Is it produced here by the plaintiff and examined by you?

Answer. It is.

GEORGE O. SAWYER, JR.

NOTE.—The above book was offered by the plaintiff's
34 counsel to be identified by magistrate and to be offered at the trial.

Book produced and marked Plaintiff's Book, Exhibit No. 5, and with magistrate's initials and date, M'ch 26, 1884.

UNITED STATES OF AMERICA, } ss:
District of Massachusetts, }

I, Henry G. Nichols, notary public in and for the county of Suffolk, State of Massachusetts, do hereby certify that the reason for taking the foregoing depositions is that both of the witnesses live and did live at the time of taking said depositions in the State of Massachusetts, the same being at a greater distance than one hundred miles from the city of Grand Rapids, in the State of Michigan, where the court at which it is expected the cause in the caption- of said deposition- will be tried was appointed by law to be held, to wit, more than one hundred miles therefrom, as appears by the affidavit of John E. More, hereto attached.

I further certify that on the twenty-fifth day of March, A. D. 1884, and thereafter from day to day until said deposition- *was* completed I was attended at my office, at forty (40) Water street, in the city of Boston, in said county of Suffolk, by B. F. Brooks, Esq., in behalf of the plaintiff in said cause, and by M. Brown, Esq., in behalf of the defendant Dowling, no one appearing in behalf of the other defendants or either of them, and by the said witnesses John S. Learoyd and George O. Sawyer, Junior, who were of sound mind and lawful age, and the witnesses were by me carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and were examined on oral interrogatories by the said B. F. Brooks, Esq., and cross-examined orally by the said M. Brown, Esq., and the depositions were by me reduced to writing in the presence of the said witnesses and from their statements, and

after carefully reading the same to the said witnesses they
35 subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of sealing up and directing the same, with this certificate of the reasons aforesaid for taking said depositions, with my own hand, to the court for which the same were taken.

And I do further certify that I am not of counsel or attorney for either of the parties in said deposition- and caption- named, or in any way interested in the event of said cause.

In testimony whereof I have hereunto set my hand and notarial seal this twenty-sixth day of March, A. D. 1884.

[NOTARIAL SEAL.] HENRY G. NICHOLS,
Notary Public.

[Endorsed:] No. 1828. United States circuit court for the western district of Michigan, so. div. The Nat'l Exchange Bank of Boston *vs.* Frank H. White *et als.* No. 1. Depositions of John S. Learoyd and George O. Sawyer, Jr. Opened by order of court this 11th day April, 1884. H. M. H., clerk.

36 No. 1828.

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON, Plaintiff,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, & THOMAS W. FERRY, Defendants. } (No. 1828.)

Depositions in behalf of the plaintiff in the above-entitled suit taken before me & sealed up by me & by me directed & transmitted to the clerk of the above-named court.

No. 1. HENRY G. NICHOLS,
Notary Public.

To HENRY M. HINSDILL, Esq.,
Clerk of the Circuit Court of the United States for the Western District of Michigan, Grand Rapids, Michigan.

[Written across the face:] Rec'd & filed this 10th day of April, A. D. 1884. H. M. Hinsdill, clerk.

[Written across the face in red ink:] Opened by order of the court this 11th day of April, 1884. H. M. Hinsdill.

37 March Term, A. D. 1884.

FRIDAY, *April* 11.

The court met pursuant to adjournment.
Present: The Honorable Solomon L. Withey, district judge.

NATIONAL EXCHANGE BANK OF BOSTON *vs.* FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } (Case No. 1.) No. 1828.

In this cause, on application of John E. More, attorney for the plaintiff, it is ordered that the depositions taken before H. J. Nichols in behalf of plaintiff be, and the same are hereby, opened.

38 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

GEORGE E. DOWLING, Impleaded with FRANK H. WHITE, EDWARD P. FERRY, and THOMAS W. FERRY, Def'ts, *ads.* THE NATIONAL EXCHANGE BANK OF BOSTON, Pl'ff. } No. 1828.

GEORGE E. DOWLING, Impleaded with FRANK H. WHITE, EDWARD P. FERRY, and THOMAS W. FERRY, Def'ts, *ads.* THE NATIONAL EXCHANGE BANK OF BOSTON, Pl'ff. } No. 1839.

and

GEORGE E. DOWLING, Impleaded with FRANK H. WHITE, EDWARD P. FERRY, and THOMAS W. FERRY, Def'ts, *ads.* THE NATIONAL EXCHANGE BANK OF BOSTON, Pl'ff. } No. 1853.

WESTERN DISTRICT OF MICHIGAN, *Southern Division*, } *ss:*

George E. Dowling, of Montague, in said district, being duly sworn, says that he has fully and fairly stated the case in each of the above causes to Hon. M. Brown, his counsel therein, who resides at
39 the city of Big Rapids, in said district, and that he has a good and substantial defense in each of said cases upon the merits thereof, as he is advised by his said counsel after such statement made as aforesaid and which he verily believes to be true.

This deponent further says that he has also fully and fairly disclosed to his said counsel the facts which he expects and believes that he will be able to prove by Edward P. Ferry and Thomas W. Ferry as witnesses for this deponent in each of said cases, and that the said Edward P. Ferry and Thomas W. Ferry are and each of them is a material witness for this deponent in each of said causes, as he is advised by his said counsel after such statement made as

aforesaid, and verily believes it to be true, and that he cannot safely proceed to the trial of said causes or either of them without the testimony of the said Edward P. Ferry and Thomas W. Ferry and each of them, as this deponent is also advised by his said counsel after such statement made as aforesaid and — verily believes to be true.

This deponent further says that within a short time after the papers by which these suits were commenced were served on this deponent he had an interview with the said Edward P. Ferry, and the said Edward P. Ferry then promised this deponent that he would cause said suits to be settled and discontinued, and that a short time thereafter he again saw said Ferry and was informed by him that he had given security for the benefit of said plaintiff to secure it for the amount claimed to be owing it in said suits, and that the plaintiff had accepted such security and agreed to discontinue said suits; that this deponent fully believed the statements of said Ferry to be true and relied thereon and never knew or supposed that the plaintiff claimed anything to the contrary until some time in the month of March last past, when he was informed by his counsel, upon this deponent's return from the State of Arkansas, where he had been spending some time, that notices had been served upon him to take depositions on the part of the plaintiff in said causes; that this deponent immediately upon receiving such notices conferred with his counsel, and his counsel thereupon wrote said Ferry, who was then at Park City, Utah, and on or about the 15th inst. received an answer from said Ferry, of which the annexed is a copy.

This deponent further says that had he not supposed and believed that said cases had been settled he would have procured the attendance of said Edward P. Ferry as a witness on the trial of said cases or his testimony by commission; that the said Edward P. Ferry is now at Park City, Utah, engaged in business there.

This deponent further says that he believes that he will be able to prove by said Edward P. Ferry that the notes upon which the plaintiff seeks to recover in these cases were not nor was either of them ever made or used in the business or for the benefit of the firm of F. H. White & Co., and that such name was signed without the knowledge or consent of this deponent, and that the plaintiff did not purchase nor receive the same in the usual course of business.

This deponent further says that the said Thomas W. Ferry is now and ever since about the first of May last past has been in Europe; that he left the State of Michigan in Jan'y, 1883, and has never been back to this State since that date, to this deponent's knowledge or belief.

This deponent further says that on or about the 27th day of March last past the plaintiff took depositions in these cases at Boston, Mass.; that this deponent had his counsel attend at the taking of such depositions, and immediately after his return from the taking of such depositions this deponent had a conference with his said counsel, and upon such conference this deponent learned for

the first time that the said Thomas W. Ferry was a material
41 witness for this deponent upon the trial of said cause; this deponent further says that he expects and believes that he shall be able to prove by the said Thomas W. Ferry that the notes upon which the plaintiff seeks to recover in these cases were not nor was either of them ever made or used in the business or for the benefit of the firm of F. H. White & Co., and that such name was signed without the knowledge or consent of this deponent, and that the plaintiff did not purchase or receive the same in the usual course of business and is not an innocent holder of the same. This deponent further says that he expects and believes that he will be able to procure the attendance of the said witnesses at the next term of this court or their testimony by commission, and that this application for continuance is not made for the purpose of delay merely, but for the purpose of obtaining a fair and impartial trial upon the merits; and further says not.

GEORGE E. DOWLING.

Subscribed and sworn to before me this 17th day of April, A. D. 1884.

CHARLES CHANDLER,
Notary Public, Kent Co., Mich.

(Copy.)

Crescent Mining Company.

At the mine, near Park City, Utah.

APRIL 9TH, 1884.

Hon. M. Brown.

DEAR SIR: Yours of 3rd is at hand and I answer at once. There is some mistake on the part of the bank. Champlin & More, of Grand Rapids, were their att'ys, and I have a letter from them saying that "much to their regret their client declined to accept my proposition," although I had been led to believe from their talk
with me and from what Mr. Champlin said that they would,
42 and therefore made the m'tg'e to Jas. Blair, trustee, including their claim. I was surprised at the declination, and I think that you know me well enough to be certain that I should certainly reply to a letter or any communication received by them. I should be glad if it would contribute to adjustment to have the suit continued as you suggest, and at any rate wish that you would enclose Mr. Brooks, the att'y and one of the directors of the bank, a copy of this letter, that I may be relieved of any charge of a want of courtesy.

Y'rs truly, EDW'D P. FERRY.

[Endorsed:] No. 1828. The circuit court of the United States for the 6th circuit and western district of Michigan, southern division. George E. Dowling, impleaded with Frank H. White *et al.*, def't-, *ads.* The National Exchange Bank of Boston, pl'ff. Affidavit

for continuance. Cases No. 1828, 1839, & 1853. Filed April 18, A. D. 1884. H. M. Hinsdill, clerk. M. Brown, att'y for def't Dowling. J. C. Fitz Gerald, of counsel.

43 March Term, A. D. 1887.

FRIDAY, *April* 18.

The court met pursuant to adjournment.

Present: The Honorable Solomon L. Withey, district judge.

NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } No. 1828.

In this cause, application having been made by defendant George E. Dowling for a continuance, said matter came on to be heard, J. C. Fitz Gerald, Esq., of counsel, appearing for said Dowling, and John C. More, Esq., for the plaintiff, and the court, after hearing said counsel—

Ordered that said cause be, and the same hereby is, continued for the term with costs, including an attorney fee of five dollars.

44 [Endorsed:] No. 1828. U. S. circuit court, western district of Michigan, southern division. The National Exchange Bank of Boston, plaintiff, *vs.* Frank H. White, George E. Dowling, Edward P. Ferry, and Thomas W. Ferry, defendants. No. 1. Note of issue. Issue joined as to White Apr. 3, '83; as to Dowling M'ch 30, '83; as to E. P. Ferry May 21, 1883. Cause of action, assumpsit. John E. More, attorney for plaintiff; Smith, Nims, Hoyt & Erwin, for White; M. Brown, for Dowling; T. J. O'Brien, for E. P. Ferry, attorney for defendant. To Henry M. Hinsdill, clerk U. S. circuit court: Please place on calendar for October term. Yours, John E. More, attorney for plaintiff. Filed Sept. 17, 1884. H. M. Hinsdill, clerk.

45 *Taxed Bill of Costs.*

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, & EDWARD P. FERRY. } Plaintiff's Bill of Costs. No. 1. 1828.

Attorney fee by statute	
Marshal's fees	$13 44
Clerk's fees	10 00
Total	$23 44

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } ss:

I hereby tax the foregoing bill of costs at the sum of twenty-three & $\frac{44}{100}$ dollars.
Dated Jan'y 13, 1885.

HENRY M. HINSDILL, *Clerk.*

[Endorsed:] No. 1828. Circuit court of the United States for the sixth circuit and western district of Michigan, southern division. The National Exchange Bank of Boston *vs.* Frank H. White *et al.* No. 1. Plaintiff's taxed bill of costs. Plaintiff's costs taxed at $23.44. Filed Jan'y 13, A. D. 1885. —— ——, clerk. John E. More, att'y for plaintiff.

To T. J. O'Brien, Esq., attorney for defendant E. P. Ferry:

Take notice that the foregoing is a copy of the plaintiff's bill of costs proposed to be taxed, and that application will be made to the clerk of the said court to tax the same, at his office, on the 12th day of January, A. D. 1885, at two o'clock p. m.
Dated this 6th day of January, A. D. 1885.

JOHN E. MORE,
Att'y for the Plaintiff.

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } ss:

Charles M. Wilson, being duly sworn, says that on the sixth day of January, A. D. 1885, at 11¼ o'clock a. m., he served a copy of the above bill of costs, affidavit, and notice of application for taxation upon T. J. O'Brien, attorney for the defendant E. P. Ferry, by delivering the same to him personally.

CHARLES M. WILSON.

Sworn to and subscribed before me this 12th day of January, A. D. 1885.

H. M. HINSDILL,
U. S. Com'r.

46 The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } No. 1. (1828.)

Stipulated herein that Norris and Uhl may be substituted in the place and stead of John E. More as attorneys for the plaintiff.
Feb'y 6th, 1885.

JOHN E. MORE,
Attorney for Plaintiff.

[Endorsed:] No. 1828. U. S. cir. court, W. D. Mich. National Exchange Bank *vs.* Frank H. White *et al.* Stipulation for substitution of attorneys. Filed Feb'y 10, 1885. H. M. Hinsdill, clerk. Norris & Uhl, pl't'ff's att'ys.

47 October Term, A. D. 1884.

NATIONAL EXCHANGE BANK OF BOSTON *vs.* FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } No. 1. (1828.) Dated Feb'y 10, '85.

In this cause, on filing the written consent of John E. More thereto and on motion of said John E. More—

Ordered that Norris & Uhl be, and they hereby are, substituted in place of said John E. More as attorneys for the plaintiff herein.

JOHN E. MORE,
Pl't'ff's Att'ys.

48 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division, of the March Term, A. D. 1883.

WESTERN DISTRICT OF MICHIGAN, *ss:*

The National Exchange Bank of Boston, a corporation organized and doing business under the laws of the United States, which is a citizen of the State of Massachusetts, by Champlin & More, its attorneys, filing this its declaration as commencement of suit, complains of Frank H. White, George E. Dowling, Edward P. Ferry, and Thomas W. Ferry, who are citizens of the State of Michigan, of a plea of trespass on the case upon promises—

For that whereas the said defendants Frank H. White, George E. Dowling, and Edward P. Ferry, before and at the time of the making of the several promises hereinafter mentioned and on, to wit, the twenty-seventh day of November, 1882, were copartners, doing business under the firm name and style of F. H. White & Co.;

And for that whereas the said defendants Thomas W. Ferry and Edward P. Ferry, before and at the time of the making of the several promises hereinafter mentioned and on, to wit, the twenty-seventh day of November, 1882, were copartners, doing business under and by the firm name and style of "Ferry & Bro.;"

And whereas, also, the defendants, on the first day of April, 1883, were indebted to the plaintiff in the sum of ten thousand dollars for the price and value of goods then sold and delivered by the plaintiff to the defendants at their request;

And in a like sum for the price and value of work then done and materials for the same provided by the plaintiff for the defendants at their request;

And in a like sum for money then lent by the plaintiff to
49 the defendants at their request;

And in a like sum for money then paid by the plaintiff for the defendants at their request;

And in a like sum for money then received by the defendants for the use of the plaintiff;

And in a like sum for money found to be due from the defendants to the plaintiff on an account stated between them;

And whereas the defendants, afterwards and on the day and year aforesaid, in consideration of the premises respectively, then promised the plaintiff to pay it the said several last-mentioned moneys respectively on request, yet they have disregarded their promises and have not paid any of the said moneys or any part thereof, to the plaintiff's damage of ten thousand dollars; and thereupon it brings suit, etc.

CHAMPLIN & MORE,
Plaintiff's Attorneys.

To the within-named defendants:

Take notice that on the trial of the above cause plaintiff under the money counts will give in evidence a certain promissory note, a copy of which is given below, and which note constitutes plaintiff's sole cause of action in this cause.

CHAMPLIN & MORE,
W., *Plaintiff's Attorneys.*

[Written across the face in red ink:] P. N. P. M'ch 30, '83. 2.06. C. F. T.

"$5,100.73. MONTAGUE, MICH., *Nov. 27th*, 1882.

"Four months after date we promise to pay to the order of Ferry & Bro. fifty-one hundred and $\frac{73}{100}$ dollars at the National Exchange bank, Boston, Mass., value received.

"F. H. WHITE & CO."

Which said note is endorsed as follows:
"Ferry & Bro."

We hereby acknowledge ourselves security for all costs adjudged against the plaintiff in the within cause.

CHAMPLIN & MORE.

[Endorsed:] No. 1839. United States circuit court. The National Exchange Bank, Boston, *vs.* Frank H. White *et al.* Copy *narr.* To the within-named defendants: Take notice that on filing a declaration in this cause (of which the within is a true copy) as commencement of this suit a rule was entered in the book of common rules kept by the clerk of said court in his office, in the city of Grand Rapids, requiring you to plead to said declaration within twenty days after the service of a copy thereof and notice of this rule, or judgment, etc. Yours, etc., Champlin & More, W., attorneys for pl't'ff. Filed April 12, 1883. Henry M. Hinsdill, clerk.

50 The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division, March Term, A. D. 1883.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, Edward P. Ferry, and Thomas W. Ferry.
} Dated April 12th, 1883.

In this cause, on filing declaration as commencement of suit and on motion of Champlin & More, attorneys for plaintiff—

Ordered that the defendants herein appear and plead to said declaration within twenty days after service on them of a copy thereof, together with notice of this rule, or judgment, &c.

CHAMPLIN & MORE,
Attorneys for Plaintiff.

51 UNITED STATES OF AMERICA :

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division, of the March Term, A. D. 1883.

WESTERN DISTRICT OF MICHIGAN, *ss:*

The National Exchange Bank of Boston, a corporation organized and doing business under the laws of the United States, which is a citizen of the State of Massachusetts, by Champlin & More, its attorneys, filing this its declaration as commencement of suit, complains of Frank H. White, George E. Dowling, Edward P. Ferry, and Thomas W. Ferry, who are citizens of the State of Michigan, of a plea of trespass on the case upon promises—

For that whereas the said defendants Frank H. White, George E. Dowling, and Edward P. Ferry, before and at the time of the making of the several promises hereinafter mentioned and on, to wit, the twenty-seventh day of November, 1882, were copartners, doing business under the firm name and style of F. H. White & Co.;

And for that whereas the said defendants Thomas W. Ferry and Edward P. Ferry, before and at the time of the making of the several promises hereinafter mentioned and on, to wit, the twenty-seventh day of November, 1882, were copartners, doing business under and by the firm name and style of " Ferry & Bro.; "

And whereas also the defendants, on the first day of April, 1883, were indebted to the plaintiff in the sum of ten thousand dollars for the price and value of goods then sold and delivered by the plaintiff to the defendants at their request;

And in a like sum for the price and value of work then done and materials for the same provided by the plaintiff for the defendants at their request;

And in a like sum for money then lent by the plaintiff to
52 the defendants at their request;

And in a like sum for money then paid by the plaintiff for the defendants at their request;

And in a like sum for money then received by the defendants for the use of the plaintiff;

And in a like sum for money found to be due from the defendants to the plaintiff on an account stated between them;

And whereas the defendants, afterwards and on the day and year aforesaid, in consideration of the premises respectively, then promised the plaintiff to pay it the said several last-mentioned moneys respectively on request, yet they have disregarded their promises and have not paid any of the said moneys or any part thereof, to the plaintiff's damage of ten thousand dollars; and thereupon it brings suit, etc.

CHAMPLIN & MORE,
W., *Plaintiff's Attorneys.*

To the within-named defendants:

Take notice that on the trial of the above cause plaintiff, under the money counts, will give in evidence a certain promissory note, a copy of which is given below, and which note constitutes plaintiff's sole cause of action in this cause.

CHAMPLIN & MORE,
W., *Plaintiff's Attorneys.*

[Written across the face in red ink:] P. N. P. M'ch 30, '83. 2.06. C. F. T.

"$5,100.73. MONTAGUE, MICH., *Nov. 27th*, 1882.

"Four months after date we promise to pay to the order of Ferry & Bro. fifty-one hundred and $\frac{73}{100}$ dollars at the National Exchange bank, Boston, Mass., value received.

"F. H. WHITE & CO."

Which said note is endorsed as follows:
"Ferry & Bro."

WESTERN DISTRICT OF MICHIGAN, *Southern Division*, } *ss:*

I hereby certify and return that on the 4th day of May,
53 1883, I served a true copy of the within declaration, together with notice of rule to appear and plead endorsed thereon as is hereon endorsed, on Edward P. Ferry, one of the defendants named in said declaration, by delivering to said Edward P. Ferry personally said copy at Grand Haven, in said district and division.

JAS. MONROE,
U. S. Marshal.

Fees:

Service	$2 00
Copy	50
Travel, 33	1 98
	$4 48

WESTERN DISTRICT OF MICHIGAN, *Southern Division*, } ss:

I hereby certify and return that on the 13th day of April, 1883, I served a true copy of the within declaration, together with notice of rule to appear and plead endorsed thereon as is hereon endorsed, on Frank H. White and George E. Dowling, two of the defendants named in said declaration, by delivering to said Frank H. White and George E. Dowling each personally one of said copies and notice at Montague, in said district and division.

JAMES MONROE, *U. S. Marshal*,
By CASSIUS M. KING, *Deputy*.

Fees:

Service	$4 00
Copy	1 00
66 miles travel	3 96
	$8 96

[Endorsed:] No. 1839. United States circuit court. The National Exchange Bank of Boston *vs.* Frank H. White *et al.* Copy *narr.* To the within-named defendants: Take notice that on filing a declaration in this cause (of which the within is a true copy) as commencement of this suit a rule was entered in the book of common rules kept by the clerk of said court in his office, in the city of Grand Rapids, requiring you to plead to said declaration within twenty days after the service of a copy thereof and notice of said rule, or judgment, &c. Yours, &c., Champlin & More, attorneys for pl't'ff. Filed April 16, '83. H. M. Hinsdill, clerk.

54 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
GEORGE E. DOWLING, Impleaded with FRANK H. WHITE, EDWARD P. FERRY, and THOMAS W. FERRY.

And now comes the said defendant, George E. Dowling, by M. Brown, his attorney, and demands a trial of the matters set forth in the plaintiff's declaration in this cause.

M. BROWN,
Attorney for Def't George E. Dowling.

[Endorsed:] No. 1839. United States of America. The cir. c't of the U. S. for the 6th cir. & west. dist. of Michigan. The National Exchange Bank of Boston *vs.* George E. Dowling, impleaded with Frank H. White, Edward P. Ferry, and Thomas W. Ferry. Plea, gen'l issue. Filed May 2, 1883. Henry M. Hinsdill, clerk. M. Brown, att'y for def't George E. Dowling.

55 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
GEORGE E. DOWLING, Impleaded with FRANK H. WHITE, EDWARD P. FERRY, and THOMAS W. FERRY.

WESTERN DISTRICT OF MICHIGAN, *Southern Division*, } *ss:*

George E. Dowling, of Montague, Michigan, being duly sworn, deposes and says that he is one of the defendants in this cause. Deponent says, further, that on the 27th day of November, A. D. 1882, and for a long time previous thereto he was and still is a member of the copartnership firm of F. H. White & Co., of Montague, Michigan; that said firm since its formation has been and still is composed of Frank H. White, Edward P. Ferry, and George E. Dowling, this deponent, as copartners. Deponent says, further, that he never executed the promissory note a copy of which was served upon him with the plaintiff's declaration in this cause; that the signature thereto is not in his handwriting, and that said promissory note was not executed by any person having authority to bind this deponent or to bind the said defendants, Edward P. Ferry, Frank H. White, and this deponent jointly; and further this deponent says not.

GEORGE E. DOWLING.

Subscribed and sworn to before me this 1st day of May, A. D. 1883.

CHRISTIAN L. STRENG,
Notary Public, Muskegon Co., Mich.

[Endorsed:] No. 1839. United States of America. The cir. c't of the United States for the 6th circuit and western dist. of Mich., so. division. The National Exchange Bank of Boston *vs.* George E. Dowling, impleaded with Frank H. White, Edward P. Ferry, and Thomas W. Ferry. Affidavit denying execution of note. Filed May 2, 1883. Henry M. Hinsdill, clerk. M. Brown, att'y for def't George E. Dowling.

56 The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON, Plaintiff,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY, Defendants.

And now comes the said defendants, Frank H. White and Edward P. Ferry, and demand a trial of the matters set forth in the plaintiff's declaration.

May 1, 1883.

SMITH, NIMS, HOYT & ERWIN,
Att'ys for Def't- Frank H. White and Edward P. Ferry.

[Endorsed:] No. 1839. The circuit court of the United States for the sixth circuit and western district of Michigan, southern division. The National Exchange Bank of Boston, plaintiff, *vs.* Frank H. White *et al.*, defendants. Plea, gen'l issue, of def'ts Frank H. White and Edward P. Ferry. Filed May 3rd, 1883. H. M. Hinsdill, clerk. Smith, Nims, Hoyt & Erwin, att'y- for def'ts Frank H. White and Edward P. Ferry.

57 The Circuit Court of the United States for the Western District of Michigan, Southern Division.

EDWARD P. FERRY, FRANK H. WHITE, GEORGE E. DOWLING, and THOMAS W. FERRY
ads.
THE NATIONAL EXCHANGE BANK OF BOSTON.

And the said defendant, Edward P. Ferry, by T. J. O'Brien, his attorney, comes and demands a trial of the matters set forth in the declaration of the said plaintiff.

T. J. O'BRIEN,
Att'y for Def't E. P. Ferry.

[Endorsed:] No. 1839. United States circuit court, western dist. Mich. The Nat'l Exchange Bank of Boston *vs.* Frank H. White *et al.* Plea of def't E. P. Ferry. Filed May 21, 1883. Henry M. Hinsdill, clerk. T. J. O'Brien, att'y for def't E. P. Ferry.

58 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 2.

We hereby consent that John E. More be substituted in our place as attorney for the plaintiff in this cause.

Dated Grand Rapids, December 31, 1883.

CHAMPLIN & MORE,
Attorneys for Plaintiff.

[Endorsed:] No. 1839. United States circuit court for the western district of Michigan, so. division. The National Exchange Bank of Boston *vs.* Frank H. White *et al.* No. 2. Consent to substitution. Filed Jan'y 4, '84. H. M. Hinsdill, clerk. Champlin & More, att'ys for plaintiff.

59 October Term, A. D. 1883.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } No. 2.

Dated JANUARY 4, 1884.

In this cause, on filing the written consent of Champlin & More thereto and on their motion—

Ordered that John E. More be, and he is hereby, substituted in the place of said Champlin & More as attorney for plaintiff herein.

CHAMPLIN & MORE,
Att'ys for Plaintiff.

60 [Endorsed:] No. 1839. U. S. circuit court, western district of Michigan, southern division. The National Exchange Bank of Boston, plaintiff, — Frank H. White, George E. Dowling, Edward P. Ferry, and Thomas W. Ferry, defendants. No. 2. Note of issue. Issue joined as to White May 3, '83; as to Dowling, May 2, '83; as to E. P. Ferry, May 21, '83. Cause of action, assumpsit. John E. More, attorney for plaintiff; Smith, Nims, Hoyt & Erwin, for White; M. Brown, for Dowling; T. J. O'Brien, for E. P. F., attorneys for defendant. To Henry M. Hinsdill, clerk U. S. circuit court, western district of Michigan: Please place on calendar for March term, 1884. Yours, John E More, attorney for plaintiff. Filed Feb'y 12th, 1884. H. M. Hinsdill, clerk.

61 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 2.

SIRS: Please take notice that the depositions of John S. Learoyd and George O. Sawyer, of the city of Boston, Suffolk county, State of Massachusetts, will be taken on behalf of the plaintiff in this cause before Henry G. Nichols, a notary public, at his office, in said city of Boston, said office being situated at number forty (40) Water street, on the fourth day of March, A. D. 1884, at ten o'clock in the

forenoon of that day, at which time and place you are at liberty to appear and put such questions to said witnesses as you may see fit.

Dated Grand Rapids, Feb. 16th, 1884.

Yours, &c.,

JOHN E. MORE,
Att'y for Plaintiff.

To T. J. O'Brien, Esq., att'y for def't E. P. Ferry; Messrs. Smith, Nims, Hoyt & Erwin, att'ys for def't White; M. Brown, Esq., att'y for def't Dowling.

62 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 2.

WESTERN DISTRICT OF MICHIGAN, *ss*:

John E. More, of the city of Grand Rapids, in said district, being duly sworn, says that he is the attorney for the plaintiff in this cause; that the above-entitled suit is a civil cause now depending in said court, and that said cause is now at issue; that John S. Learoyd and George O. Sawyer are material witnesses for plaintiff in this cause, and both reside at the city of Boston, county of Suffolk and State of Massachusetts, and that said city of Boston is at a greater distance than one hundred miles from the city of Grand Rapids, in said district, the place of trial of this cause.

JOHN E. MORE.

Subscribed and sworn to before me this 16th day of February, 1884.

CHAS. M. WILSON,
Notary Public, Kent County, Michigan.

63 UNITED STATES OF AMERICA, *Western District of Michigan*, } *ss*:

Charles M. Wilson, of the city of Grand Rapids, in said district, being duly sworn, says that on the eighteenth day of February, A. D. 1884, he served a notice, of which the attached notice is a true copy, together with a true copy of the annexed affidavit, on T. J. O'Brien, Esq., attorney for defendant E. P. Ferry in the within-entitled cause, by giving the same to him personally; that on the same day he served a notice, of which the attached notice is a true copy, together with a copy of the attached affidavit, on Messrs. Smith, Nims, Hoyt & Erwin, attorneys for defendant White in the within-entitled cause, by depositing the same in a United States letter-box in said city of Grand Rapids, enclosed in an envelope, postage fully prepaid, addressed to said Smith, Nims, Hoyt & Erwin, at Muskegon, Michigan, that being the place of their residence and business;

that on the same day he served a notice, of which the attached notice is a true copy, together with a true copy of the attached affidavit, on M. Brown, Esq., attorney for defendant Dowling in the within-entitled cause, by depositing the same in a United States letter-box at said city of Grand Rapids, enclosed in an envelope, postage fully prepaid, addressed to said Brown, at Big Rapids, Michigan, that being the residence of said Brown.

CHARLES M. WILSON.

Subscribed and sworn to before me this 18th day of February, A. D. 1884.

[NOTARIAL SEAL.] WALTER H. HUGHES,
Notary Public, Kent County, Michigan.

64 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the 6th Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 2.

Stipulated that the time for taking the deposition- in the above-entitled cause of John S. Learoyd and George O. Sawyer, of the city of Boston, Suffolk county, State of Massachusetts, which has heretofore been noticed to be taken on the 4th day of March next, before Henry G. Nichols, at his office, in said city of Boston, be, and the same is hereby, postponed to the 25th day of March aforesaid, at the same hour and place.

Dated Feb'y 26th, 1884.

JOHN E. MORE, *Att'y for Pl'ff.*
T. J. O'BRIEN,
Att'y for Def't E. P. Ferry.
M. BROWN, *Att'y for Def't Dowling.*
SMITH, NIMS, HOYT & ERWIN,
Att'ys for Def't White.

65 UNITED STATES OF AMERICA.

DISTRICT OF MASSACHUSETTS,
State of Massachusetts, County of Suffolk, } *ss:*

Be it remembered that on this twenty-fifth day of March, 1884, by adjournment, by stipulation hereto annexed, I, Henry G. Nichols, notary public in and for said county of Suffolk, did call and cause to be and appear personally before me, at my office, at number forty (40) Water street, in the city of Boston, in said district, county, and State, John S. Learoyd, of the city of Boston aforesaid, to testify and the truth to say on the part and behalf of the plaintiff in a certain cause or matter in controversy now depending and undetermined in the circuit court of the United States for the sixth circuit and

western district of Michigan, southern division, at the city of Grand Rapids, in said western district of Michigan, wherein The National Exchange Bank of Boston, Massachusetts, is plaintiff, and Frank H. White, George E. Dowling, Edward P. Ferry, and Thomas W. Ferry are defendants (the cause being number three (3) of the title just recited), and it appearing by the affidavit which is hereto attached that reasonable notice of the taking of these depositions has been duly served on the attorneys for the defendants White, Dowling, and E. P. Ferry, *of the taking of these depositions has been duly served on the attorneys for the defendants White, Dowling, and E. P. Ferry.*

And on March 25th, 1884, I adjourned this hearing until March 26th, 1884, at nine o'clock a. m., the testimony in cause numbered one, of the same title as this cause, not being finished, and on said March 26th, at my office, 40 Water street, at Boston aforesaid, *and* the said JOHN S. LEAROYD, being about the age of fifty and having by me first been cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy
66 aforesaid, being examined upon oral interrogatories by B. F. BROOKS, Esq., appearing on behalf of the said plaintiff, did thereupon depose, testify, and say as follows:

Int. 1. What is your name, age, and occupation?

Answer. John S. Learoyd; fifty-one; cashier of the National Exchange Bank of Boston.

Int. 2. How long have you been cashier of the National Exchange Bank of Boston?

Answer. About three years and a half last past.

Int. 3. Please examine the letter now shown you, addressed to you and dated Nov. 27, 1882, marked "Exhibit No. 1" and to be annexed to your deposition, and state when, if ever, you received it.

Answer. I received it December 1st, 1882.

Letter produced and put in evidence and marked "Exhibit No. 1," and with magistrate's initials.

(Objected to by defendant Dowling's counsel as being incompetent, immaterial, and irrelevant.)

Int. 4. Please state when, if ever, you received the note mentioned in said letter.

Answer. December 1st, 1882.

Int. 5. What, if anything, did you do in respect to said note, and when?

Answer. I discounted the note the same day it came to my hands.

Int. 6. In what capacity were you acting in discounting said note?

Answer. Discount clerk.

Int. 7. For whom?

Answer. For the National Exchange Bank of Boston.

Int. 8. Please state what was done in respect to the proceeds of said discount.

67 Answer. They were passed to the credit of Ferry & Bro. on December 2nd, 1882.

Int. 9. Please state whether Ferry & Bro. were advised of the discount and of the passing the proceeds thereof to their credit by the bank; if so, how and when.

Answer. I am unable to answer that question, because I don't find any copy of the letter.

Int. 10. Do you know whether any such letter was sent?

Answer. I do not know.

Int. 11. Please describe said note, giving date, names of promissors and endorsers thereon, and amount of time thereof.

(Objected to by defendant Dowling's counsel as being incompetent.)

Answer. Promissors were F. H. White & Co.; endorsers were Ferry & Bro.; amount, fifty-one hundred and $\frac{73}{100}$ (5,100.73) dollars; date, Nov. 27, '82; time, four months.

Int. 12. Was any entry made of the discount of said note upon any book of the bank? If so, please point out the entry, state in whose handwriting it is, what the entry is, and on what book.

(Defendant Dowling's counsel objects to that part of question calling for what the entry is as being incompetent.)

Answer. There was an entry of the discount of said note upon the Discount Record, letter M, of the National Exchange Bank of Boston. It is in my handwriting and under head of discount No. 38 and is as follows: March 27–30; 140; F. H. White & Co.; Ferry & Bro.; 5,100.73; 101.17; 4,999.56.

Int. 13. State whether the same is in columns in said book; and, if so, explain the meaning of each column.

Answer. It is in columns. 1st column, in which is March 27–30, is for due date; 2nd column, in which is 140, is the number
68 of the note; 3rd column, in which is F. H. White & Co., is for the promissor; fourth and fifth columns, in which is Ferry & Bro., are for the endorsers and the parties who have the discount; the sixth column, in which is 5,100.73, is for the amount of the note; the seventh column, in which is 101.17, is for the amount of discount; eighth column, in which is 4,999.56, is for the net amount.

Int. 14. When was said entry made by you?

Answer. December 2nd, 1882.

Int. 15. State whether that entry was made among other discounts and whether the same was made in the ordinary course of business and whether there was anything unusual or extraordinary about the entry; and, if so, what.

(Defendant Dowling's counsel objects to the question as immaterial, irrelevant, and incompetent.)

Answer. It was made among other discounts in the ordinary course of business and there was nothing unusual or extraordinary about it.

Int. 16. Please state whether the proceeds of said discount were ever entered to the credit of said Ferry & Bro.; and, if so, what the

entry is, in what book it is, by whom, and in whose handwriting it is entered.

(Defendant Dowling's counsel objects to question as incompetent and immaterial.)

Answer. The proceeds were passed to the credit of Ferry & Bro. in the book called Balances, No. 10, Jan'y, 1882, A–J, of the National Exchange Bank of Boston, by the book-keeper, George O. Sawyer, Jr., and in his handwriting, and the entry is as follows: Ferry & Bro., 4,999.56 dis.

Int. 17. Against what name in the entry in said book, and whether the same is in writing or in print.

Answer. Against the name of Ferry & Bro., which is in print.

Int. 18. Under what date is said entry made?

Answer. December 2nd, 1882.

Int. 19. Did you ever see said Sawyer write? Do you know
69 his handwriting?

Answer. I have seen him write and know his handwriting.

Int. 20. Please state whether said entry in the last-mentioned book is among other entries and in the ordinary course of entries in the books or whether the same is out of the ordinary course of entry and unusual.

Answer. It is among other entries and in the ordinary course of entries in the book and is not out of the ordinary course of entry nor unusual.

Int. 21. State whether you personally made up the discount of said note and whether you know, independently of the books, what the amount of the discount was. If so, please state what the amount was.

Answer. I did make up the discount, and I know, independently of the books, what the amount was; it was $4,999.56.

Int. 22. Was there any discount ticket made; and, if so, by whom?

Answer. Yes; by myself.

Int. 23. Please examine the discount ticket now shown you and state by whom it was made and when.

Answer. It was made by myself December 2, 1882.

Discount ticket put in evidence and marked "Exhibit 2" and to be annexed to this deposition.

(Defendant Dowling's counsel objects to introduction in evidence of the discount ticket marked "Exhibit 2" because the same is incompetent, irrelevant, and immaterial.)

Int. 24. What did you do with said discount ticket, if anything?

Answer. The process is to pass it through the tellers to the book-keeper in the ordinary course of business, and this, I suppose, I started in the ordinary course of business through the tellers. It went, in the ordinary course of business, to the book-keeper.

Int. 25. State whether there was anything irregular or out
70 of the ordinary course of business of the bank in the discount of this note; and, if so, what.

(Defendant Dowling's counsel objects to the question as immaterial and leading.)

Answer. There was nothing irregular or out of the ordinary course of the business of the bank in discounting this note.

Int. 26. State whether the two books entries in which you have testified to were produced here by the plaintiff and examined by you in giving your testimony.

Answer. They were.

The two books aforesaid offered by plaintiff's counsel to be identified by the magistrate and offered in evidence at the trial. Books produced and marked respectively Plaintiff's Book 1, Exhibit No. 3, and Plaintiff's Book 2, Exhibit No. 5, and with magistrate's initials and date, M'ch 26, 1884, in both books.

Cross-examination:

And upon being cross-examined by M. BROWN, Esq., appearing for defendant Dowling, upon oral cross-interrogatories, did depose, testify, and say as follows:

X Int. 1. What, if anything, did you have to do about discounting paper that was discounted by the plaintiff at the time the note upon which this suit was brought was discounted?

Answer. Well, I had charge of the discounting of all the paper.

X Int. 2. Whether you were consulted as to what paper should be discounted by the plaintiff.

Answer. I was not consulted.

X Int. 3. Then paper that was discounted by the plaintiff was simply handed over to you with instructions to discount it?

Answer. It was.

71 X Int. 4. I call your attention to the book from which you have testified, that was kept by the book-keeper, and known as Balances No. 10, and ask you to state what balance, if any, Ferry & Bro. had at the National Exchange Bank of Boston at the close of business on the 1st day of December, 1882.

Answer. The balance of Ferry & Bro. showed overdrawn $1,972.94.

X Int. 5. What balance, if any, did they have at the same bank on the 2nd day of December, 1882?

Answer. They had a balance of $3,026.62.

X Int. 6. What can you say as to that being the amount left after subtracting the amount of the overdraft shown upon the books of the bank from the net proceeds of the discount?

Answer. I should say that that was the amount left.

X Int. 7. Who is it or what committee is it, and, if a committee, of whom was it composed at the time this discount was made, who directed as to whether the note in question in this suit should be discounted?

Answer. I am not able to state who passed upon that note.

X Int. 8. Did the plaintiff have a discount committee at the time

the note in question in this suit was discounted; and, if so, of whom was it composed?

Answer. It did not have a discount committee.

X Int. 9. What officers of the bank, if any, decided whether this note in suit should be discounted, if you know?

Answer. I couldn't tell. There might be one or more; I couldn't tell.

X Int. 10. State when Ferry & Bro. first commenced doing business with the plaintiff.

Answer. I couldn't tell without consulting the books.

X Int. 11. You stated that you knew independently of the books what the amount of the discount of the note in question in this suit was. How do you know?

72 Answer. Because before the entry is made on the books I have made a cover for the note and cast the discount.

X Int. 12. Do you mean by the last answer that you made up a discount ticket?

Answer. After having covered the note and cast the discount I then make the ticket.

X Int. 13. Do you recollect, independently of any book or record or minute made by you at the time or afterwards, this particular discount in question?

Answer. I do not.

Redirect examination:

And upon being re-examined by said B. F. BROOKS, Esq., did depose, testify, and say as follows:

Re. Int. 1. Refreshing your mind by the examination of the entry on the cover of the note and the discount ticket, are you able to testify what was the amount of the discount and is the same brought to your recollection?

Answer. The cover of a note with my writing and figures on it shows to me what the note was and the amount of discount, but naturally would not bring up any particular thing in connection with it.

Re. Int. 2. Last question repeated.

Answer. I am able to testify to the amount of the discount.

Re. Int. 3. In the book of Balances No. 10, in which is the entry of the discount of said note, in the first column of the page upon which said discount is entered, what do you find the entry to be and whether in writing or in print?

(Objected to by defendant Dowling's counsel as incompetent.)

Answer. I find in the first column, among other names, Ferry & Bro. in print.

Re. Int. 4. Please state what are the entries on the same line in the same page and explain each one.

(Same objection.)

73 Answer. Ferry & Bro.; 3,146.33; 5,119.27; 1,972.94; 4,999.56, dis.; 3,026.62. The entry 3,146.33 is a balance due Ferry &

Bro. on the morning of December 1st, 1882; the entry 5,119.27 is a check charged to their account December 1st, 1882; the entry 1,972.94 is in red ink and shows that the account is overdrawn in that sum at the close of business December 1st, 1882; the entry 4,999.56 dis. is the amount of discount December 2nd, 1882; the entry 3,026.62 is the amount of balance at the close of business December 2nd, 1882.

Re. Int. 5. What became of the checks from Ferry & Bro.?

Answer. It is our custom to render accounts monthly and return the checks—return the vouchers.

And upon being further cross-examined by said M. Brown, Esq., did depose, testify, and say as follows:

X Int. 1. What do you mean by the cover of the note?

Answer. I mean the piece of paper which is folded in convenient shape to enclose the note for safe keeping.

X Int. 2. Have you the cover of this note here?

Answer. I have.

X Int. 3. That is one of the memorandums which you have examined for the purpose of refreshing your recollection?

Answer. I have examined it for the purpose of testifying as to the amount of discount and as to the note itself.

JOHN S. LEAROYD.

Dec. 2, '82. Dis., 4,999.56. Ferry & Bro. Exhibit 2, H. G. N. M'ch 26, '84. 35,737.87.

74 "Exhibit No. 1," H. G. N. March 26, '84.

Thos. W. Ferry. Edw'd P. Ferry.

Ferry & Bro., manufacturers and dealers in lumber & shingles.

Grand Haven, Mich., *Nov.* 27, 1882.

J. S. Learoyd, Esq., cash'r, Boston, Mass.

Dear Sir: We enclose F. H. White & Co. note at 4 mo., f'm 27th, $5,100.73, which please discount and pass proceeds to credit with advice, and oblige,

Truly yours, FERRY & BRO.
THOMSON.

4,999.56
26

Ad. 12, 1.

75 United States of America, *District of Massachusetts*, } ss:

I, Henry G. Nichols, notary public in and for the county of Suffolk, State of Massachusetts, do hereby certify that the reason for taking the foregoing deposition is that the witness lives and did live at the time of taking deposition in the State of Massachusetts,

the same being at a greater distance than one hundred miles from the city of Grand Rapids, in the State of Michigan, where the court at which it is expected the cause in the caption of said deposition will be tried was appointed by law to be held, to wit, more than one hundred miles therefrom, as appears by the affidavit of John E. More, hereto attached.

I further certify that on the twenty-fifth day of March, A. D. 1884, and thereafter from day to day until said deposition was completed, I was attended at my office, at forty (40) Water street, in the city of Boston, in said county of Suffolk, by B. F. Brooks, Esq., in behalf of the plaintiff in said cause, and by M. Brown, Esq., in behalf of the defendant Dowling, no one appearing in behalf of the other defendants or either of them, and by the said witness, John S. Learoyd, and the witness was by me carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth and was examined on oral interrogatories by the said B. F. Brooks, Esq., and cross-examined orally by the said M. Brown, Esq., and the deposition was by me reduced to writing in the presence of the said witness and from his statements, and, after carefully reading the same to the said witness, he subscribed the same in my presence.

I have retained the said deposition in my possession for the purpose of sealing up and directing the same, with this certificate of the reasons aforesaid for taking said deposition, with my own hand to the court for which the same *were* taken.

76 And I do further certify that the witness, George O. Sawyer, mentioned in the affidavit of notice of taking testimony hereto attached, was prevented by serious and sudden illness from attending and giving testimony in the said cause.

And I do further certify that I am not of counsel or attorney for either of the parties in said deposition and caption named or in any way interested in the event of the said cause.

In testimony whereof I have hereunto set my hand and notarial seal this twenty-sixth day of March, A. D. 1884.

[NOTARIAL SEAL.] HENRY G. NICHOLS,
Notary Public.

[Endorsed:] No. 1839. United States circuit court for the western district of Michigan, So. div. The Nat'l Exchange Bank of Boston *vs.* Frank H. White *et als.* No. 2. Opened by order of the court April 11th, 1884. H. M. H, clerk. Deposition of John S. Learoyd.

77 No. 1839.

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON, Plaintiff,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY, Defendants. } (No. 1839.)

Depositions on behalf of the plaintiff in the above-entitled suit

taken before me & sealed up by me and by me directed & transmitted to the clerk of the above-named court.

No. 2. HENRY G. NICHOLS,
Notary Public.

To HENRY M. HINSDILL, Esq.,
Clerk of the Circuit Court of the United States for the Western District of Michigan, Grand Rapids, Michigan.

[Written across the face:] Rec'd and filed this 10th day of April, A. D. 1884. H. M. Hinsdill, clerk.

[Written across the face in red ink:] Opened by order of the court this 11th day of April, 1884. H. M. Hinsdill, cl'k.

78 March Term, A. D. 1884.

FRIDAY, *April 11th*, 1884.

The court met pursuant to adjournment.

Present: The Honorable Solomon L. Withey, district judge.

NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } (Case No. 2.) No. 1839.

In this cause, on application of John E. More, attorney for the plaintiff, it is—

Ordered that the depositions heretofore received and filed in this cause, taken before Henry G. Nichols, at Boston, Mass., in behalf of said plaintiff, be, and the same are hereby, opened.

79 March Term, A. D. 1884.

FRIDAY, *April* 18, 1884.

The court met pursuant to adjournment.

Present: The Honorable Solomon L. Withey, district judge.

NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } No. 1839.

In this cause, application having been made by defendant George E. Dowling for a continuance, the same came on to be heard—J. C. Fitz Gerald, Esq., of counsel, appearing for said Dowling, and John C. More, Esq., for plaintiff—and the court, after hearing said counsel—

Ordered that this cause be, and the same is hereby, continued for the term, with costs, including an attorney fee of five dollars.

80 [Endorsed:] No. 1839. U. S. circuit court, western district of Michigan, southern division. The National Exchange Bank of Boston, plaintiff, *vs.* Frank H. White, George E. Dowling, Edward

P. Ferrry, and Thomas W. Ferry, defendants. No. 2. Note of issue. Issued joined as to White, May 3, '83; as to Dowling, May 2, '83; as to E. P. Ferry, May 21, 1883. Cause of action, assumpsit. John E. More, attorney for plaintiff; Smith, Nims, Hoyt, & Erwin, for White; M. Brown, for Dowling; T. J. O'Brien, for E. P. Ferry, attorney- for defendant. To Henry M. Hinsdill, clerk U. S. circuit court: Please place on calendar for October term. Yours, John E. More, attorney for plaintiff. Filed. H. M. Hinsdill, clerk. Sept. 17, 1884.

81 *Taxed Bill of Costs.*

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON *vs.* FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, & EDWARD P. FERRY.	Plaintiff's Bill of Costs. No. 2. 1839.

Attorney'- fee by statute	
Marshal's fees	$13 56
Clerk's fees	12 50
Total	$26 06

THE UNITED STATES OF AMERICA, *Western District of Michigan, Southern Division,* } *ss:*

I hereby tax the foregoing bill of costs at the sum of twenty-six $\frac{6}{100}$ dollars.

Dated Jan'y 13, 1885.

H. M. HINSDILL, *Clerk.*

[Endorsed:] No. 1839. Circuit court of the United States for the sixth circuit and western district of Michigan, southern division. The National Exchange Bank of Boston *vs.* Frank H. White *et al.* No. 2. Plaintiff's taxed bill of costs. Plaintiff's costs taxed at $26.00. Filed Jan'y 13, A. D. 1885. H. M. Hinsdill, clerk. John E. More, att'y for plaintiff.

To T. J. O'Brien, Esq., attorney for defendant E. P. Ferry:

Take notice that the foregoing is a copy of the plaintiff's bill of costs proposed to be taxed, and that application will be made to the clerk of the said court to tax the same, at his office, on the 12th day of January, A. D. 1885, at two o'clock p. m.

Dated this 6th day of January, A. D. 1885.

JOHN E. MORE,
Att'y for the Plaintiff.

THE UNITED STATES OF AMERICA, *Western District of Michigan, Southern Division,* } *ss:*

Charles M. Wilson, being duly sworn, says that on the sixth day of January, A. D. 1885, at 11¼ o'clock a. m., he served a copy of the above bill of costs, affidavit, and notice of application for taxation upon T. J. O'Brien, attorney for defendant E. P. Ferry, by delivering the same to him personally.

CHAS. M. WILSON.

Sworn to and subscribed before me this 12th day of January, A. D. 1885.

H. M. HINSDILL, *U. S. Com'r.*

82 The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan.

THE NATIONAL EXCHANGE BANK OF BOSTON *vs.* FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } No. 2. (1839.)

Stipulated herein that Norris & Uhl may be substituted in the place and stead of John E. More as attorneys for plaintiff.

Feb'y 6th, 1885.

JOHN E. MORE,
Attorney for Plaintiff.

[Endorsed:] No. 1839. U. S. cir. court, W. D. Mich. National Exchange Bank *vs.* Frank H. White *et al.* Stipulation for substitution of attorneys. Filed Feb'y 10, 1885. H. M. Hinsdill, clerk. Norris & Uhl, pl'ff's att'ys.

83 October Term, A. D. 1884.

NATIONAL EXCHANGE BANK OF BOSTON *vs.* FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } No. 2. (1839.) Dated Feb'y 10, '85.

In this cause, on filing the written consent of John E. More thereto and on motion of said John E. More—

Ordered that Norris & Uhl be, and they hereby are, substituted in place of said John E. More as attorneys for the plaintiff herein.

JOHN E. MORE,
Pl'ff's Att'y.

84 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division, of the March Term, A. D. 1883.

WESTERN DISTRICT OF MICHIGAN, *ss:*

The National Exchange Bank of Boston, a corporation organized and doing business under the laws of the United States, which is a citizen of the State of Massachusetts, plaintiff herein, by Champlin & More, its attorneys, complains of Frank H. White, George E. Dowling, Thomas W. Ferry, and Edward P. Ferry, who are citizens of the State of Michigan, defendants herein, of a plea of trespass on the case upon promises, filing this declaration as commencement of suit—

For that whereas the said defendants Frank H. White, George E. Dowling, and Edward P. Ferry, before and at the time of the making of the several promises hereinafter mentioned and on, to wit, the fifteenth day of January, 1883, were copartners doing business under the firm — and style of "F. H. White & Co.;"

And for that whereas the said defendants Thomas W. Ferry and Edward P. Ferry, before and at the time of the making of the several promises hereinafter mentioned and on, to wit, the fifteenth day of January, 1883, were copartners doing business under the firm name and style of "Ferry & Bro.;"

And for that whereas the defendants, on the nineteenth day of May, A. D. 1883, were indebted to the plaintiff in the sum of ten thousand dollars for the price and value of goods then and there sold and delivered by the plaintiff to the defendants at their request;

And in a like sum for the price and value of work then and there done and materials for the same provided by the plaintiff for the defendants at their request;

85 And in a like sum for money then and there lent by the plaintiff to the defendants at their request;

And in a like sum for money then and there paid by the plaintiff for the use of the defendants at their request;

And in a like sum for money then and there received by the defendants for the use of the plaintiff;

And in a like sum for money then and there found to be due from the defendants to the plaintiff on an account stated between them.

And thereupon the said defendants, afterwards and on the day and year aforesaid, in consideration of the premises respectively, then and there promised the plaintiff to pay it the said several sums of money respectively on request, yet the said defendants have disregarded their said promises and have not (although often requested so to do) paid any of the said sums of money or any part thereof, to the plaintiff's damage of ten thousand dollars, and therefore it brings suit, etc.

CHAMPLIN & MORE,
Plaintiff's Attorneys.

To the above-named defendants:

Take notice that on the trial of the above cause the plaintiff, under the money counts, will give in evidence a certain promissory note, a copy of which is given below, and which note constitutes plaintiff's sole cause of action in this cause.

CHAMPLIN & MORE,
Plaintiff's Attorneys.

Copy.

[Written across the face in red ink:] P. N. P. May 18, '83. 2.06. C. F. T.

"$5,391.90. MONTAGUE, MICH., *Jan'ry 15th*, 1883.

"Four months after date we promise to pay to the order of Ferry & Bro. fifty-three hundred ninety-one & $\frac{90}{100}$ dollars, at the National bank, Boston, Mass., value received.

"F. H. WHITE & CO."

Which said note is endorsed as follows: "Ferry & Bro."

We hereby acknowledge ourselves to be security for all costs adjudged against the plaintiff in the within cause.

Dated May 24th, 1883.

CHAMPLIN & MORE.

86 UNITED STATES OF AMERICA, *Western District of Michigan*, } *ss:*

I hereby certify and return that on the 4th day of June, A. D. 1883, I served on Edward P. Ferry, one of the within-named defendants, by delivering to him a true copy of the within writ at Grand Haven, in said district, together with a copy of the rule to plead endorsed thereon as is hereon endorsed.

JAMES MONROE,
U. S. Marshal,
By R. WILLIAMS, *Deputy.*

Service	$2 00
Copy	50
Travel, 35 miles	2 10

WESTERN DISTRICT OF MICHIGAN, *Southern Division*, } *ss:*

I hereby certify and return that on the 28 day of May, 1883, I served a true copy of the within declaration, together with notice of rule to appear and plead endorsed thereon as is hereon endorsed, on Frank H. White and George E. Dowling, two of the defendants named in said declaration, by delivering to said Frank H. White and George E. Dowling each personally said copy and notice at Montague, in said district and division.

JAMES MONROE,
U. S. Marshal,
By CASSIUS M. KING, *Deputy.*

Fees:

2 services	$4 00
T-o copies	1 00
Travel, 66 miles	3 96
	$8 96

[Endorsed:] No. 1853. No. 3. The circuit court for the United States. The National Exchange Bank of Boston *vs.* Frank H. White *et al.* No. 3. *Narr.* To the within-named defendants: Take notice that on filing a declaration in this cause (of which the within is a true copy) as commencement of suit a rule was entered in the book of common rules, kept by the clerk of said court in his office, in the city of Grand Rapids, in said western district of Michigan, requiring you to appear and plead to said declaration within twenty days after service on you of a copy thereof and notice of said rule, or judgment, etc. Yours, etc., Champlin & More, plaintiff's attorneys. Filed May 24, A. D. 1883. H. M. Hinsdill, clerk.

87 The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division, March Term, A. D. 1883.

THE NATIONAL EXCHANGE BANK OF BOSTON *vs.* FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } No. 3. Dated May 24th, 1883.

In this cause, on filing declaration as commencement of suit and on motion of Champlin & More, attorneys for plaintiff—

Ordered that the defendants herein appear and plead to said declaration within twenty days after service on them of a copy thereof, together with notice of this rule, or judgment, &c.

CHAMPLIN & MORE,
Attorneys for Plaintiff.

88 United States Circuit Court for the Western District of Michigan, Southern Division.

EDWARD P. FERRY, THOMAS W. FERRY, FRANK H. WHITE, and GEORGE E. DOWLING *ads.* THE NATIONAL EXCHANGE B-NK OF BOSTON.

And the said defendant, Edward P. Ferry, by T. J. O'Brien, his attorney, comes and demands a trial of the matters set forth in the declaration of the said plaintiff.

T. J. O'BRIEN,
Att'y for Def't E. P. Ferry.

[Endorsed:] No. 1853. United States circuit —, west'n dist. of Michigan. Nat'l Exchange Bank of Boston *vs.* Thomas W. Ferry *et al.* Plea of def't E. P. Ferry. Filed June 9, 1883. H. M. Hinsdill, clerk. T. J. O'Brien, att'y for def't E. P. Ferry.

89 The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON, Plaintiff,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY, Defendants. } Case No. 3.

And now comes the said defendant, Frank H. White, by Smith, Nims, Hoyt & Erwin, his attorneys, and demands a trial of the matters set forth in the plaintiff's declaration.

June 16, 1883.

SMITH, NIMS, HOYT & ERWIN,
Att'ys for Def't White.

[Endorsed:] No. 1853. The circuit court of the United States for the sixth circuit and western district of Michigan, southern division. The National Exchange Bank of Boston, pl'ff, *vs.* Frank H. White *et al.*, def'ts. Plea gen'l issue of def't White. Filed June 16, 1883. H. M. Hinsdill, clerk. Smith, Nims, Hoyt & Erwin, att'ys for def't White.

90 THE UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
GEORGE E. DOWLING, Impleaded with FRANK H. WHITE, EDWARD P. FERRY, and THOMAS W. FERRY. }

The defendant George E. Dowling, by M. Brown, his attorney, comes and demands a trial of the matters set forth in the plaintiff's declaration.

M. BROWN,
Attorney for Defendant George E. Dowling.

[Endorsed:] No. 1853. The circuit court of the United States for the sixth circuit and west. dist. of Mich., so. div. The National Exchange Bank of Boston *vs.* George E. Dowling, Impleaded with Frank H. White, Edward P. Ferry, and Thomas W. Ferry. Plea, non-assumpsit. Filed July 20, 1883. Henry M. Hinsdill, clerk. M. Brown, att'y for def't George E. Dowling.

91 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
GEORGE E. DOWLING, Impleaded with FRANK H. WHITE, EDWARD P. FERRY, and THOMAS W. FERRY.

WESTERN DISTRICT OF MICHIGAN, *Southern Division,* } *ss:*

George E. Dowling, of Montague, Michigan, being duly sworn, deposes and says that he is one of the defendants in this cause; that for a long period of time before the 15th day of January, A. D. 1883, and also for a long period of time subsequent to said day he was a copartner in the firm of F. H. White & Co., of Montague, Michigan; that said firm since its formation and up to about the 31st day of May, A. D. 1883, was composed of Frank H. White, Edward P. Ferry, and this deponent as copartners. Deponent says, further, that he never executed the promissory note a copy of which was served upon him with the plaintiff's declaration in this cause; that the signature thereto is not in his handwriting, and that said promissory note was not executed by any person having authority to bind this deponent or to bind the said defendants, Edward P. Ferry, Frank H. White, and this deponent jointly.

And further this deponent says not.

GEORGE E. DOWLING.

Subscribed and sworn to before me this 14th day of July, A. D. 1883.

[NOTARIAL SEAL.] H. H. TERWILLIGER,
Notary Public in and for Muskegon County, Michigan.

[Endorsed:] No. 1853. The circuit court of the United States for the sixth circuit and west. dist. of Mich., so. div. The National Exchange Bank of Boston *vs.* George E. Dowling, impleaded with Frank H. White, Edward P. Ferry, and Thomas W. Ferry. Affidavit denying execution of note. Filed July 20, 1883. Henry M. Hinsdill, clerk. M. Brown, att'y for def't George E. Dowling.

92 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 3.

We hereby consent that John E. More be substituted in our place as attorney for the plaintiff in this cause.

Dated Grand Rapids, December 31, 1883.

CHAMPLIN & MORE,
Attorneys for Plaintiff.

[Endorsed:] No. 1853. United States circuit court for west. dist. of Michigan, so. div. The National Exchange Bank of Boston *vs.* Frank H. White *et al.* No. 3. Consent to substitution. Filed Jan'y 4, '84. H. M. Hinsdill, clerk. Champlin & More, att'ys for plaintiff.

93 October Term, A. D. 1883.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } No. 3.

Dated JANUARY 4TH, 1884.

In this cause, on filing the written consent of Champlin & More thereto and on their motion—

Ordered that John E. More be, and he is hereby, substituted in the place of said Champlin & More as attorneys for the plaintiff herein.

CHAMPLIN & MORE,
Att'ys for Plaintiff.

94 [Endorsed:] No. 1853. U. S. circuit court, western district of Michigan, so. div. The National Exchange Bank of Boston, plaintiff, *vs.* Frank H. White, George E. Dowling, Edward P. Ferry, and Thomas W. Ferry, defendants. No. 3. Note of issue. Issue joined as to White, June 16, '83; as to Dowling, July 19, '83; as to E. P. F., June 9, 1883. Cause of action, assumpsit. John E. More, attorney for plaintiff; Smith, Nims, Hoyt & Erwin, for White; M. Brown, for Dowling; T. J. O'Brien, for E. P. Ferry, attorney- for defendant-. To H. M. Hinsdill, clerk U. S. circuit court, western district Michigan: Please place on calendar for March term, 1884. Yours, John E. More, attorney for plaintiff. Filed Feb'y 12, 1884. H. M. Hinsdill, cl'k.

95 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 3.

SIRS: Please take notice that the depositions of John S. Learoyd and George O. Sawyer, of the city of Boston, Suffolk county, State of Massachusetts, will be taken on behalf of the plaintiff in this cause before Henry G. Nichols, a notary public, at his office, in said city of Boston, said office being situated at number forty (40) Water street, on the fourth day of March, A. D. 1884, at ten o'clock in the

forenoon of that day, at which time and place you are at liberty to appear and put such questions to said witnesses as you may see fit.

Dated Grand Rapids, Feb. 16th, 1884.

Yours, &c., JOHN E. MORE,
Att'y for Plaintiff.

To T. J. O'Brien, Esq., att'y for def't E. P. Ferry; Mess. Smith, Nims, Hoyt & Erwin, att'ys for def't White; M. Brown, Esq., att'y for def't Dowling.

96 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 3.

WESTERN DISTRICT OF MICHIGAN, *ss:*

John E. More, of the city of Grand Rapids, in said district, being duly sworn, says that he is the attorney for the plaintiff in this cause; that the above-entitled suit is a civil cause now depending in said court, and that said cause is now at issue; that John S. Learoyd and George O. Sawyer are material witnesses for plaintiff in this cause, and both reside at the city of Boston, county of Suffolk and State of Massachusetts, and that said city of Boston is at a greater distance than one hundred miles from the city of Grand Rapids, in said district, the place of trial of this cause.

JOHN E. MORE.

Subscribed and sworn to before me this 16th day of February, 1884.

CHAS. M. WILSON,
Notary Public, Kent County, Michigan.

97 UNITED STATES OF AMERICA,
Western District of Michigan, } *ss:*

Charles M. Wilson, of the city of Grand Rapids, in said district, being duly sworn, says that on the eighteenth day of February, A. D. 1884, he served a notice, of which the attached notice is a true copy, together with a true copy of the annexed affidavit, on T. J. O'Brien, Esq., attorney for the defendant E. P. Ferry in the within-entitled cause, by giving the same to him personally; that on the same day he served a notice, of which the attached notice is a true copy, together with a copy of the attached affidavit, on Messrs. Smith, Nims, Hoyt & Erwin, attorneys for defendant White in the within-entitled cause, by depositing the same in a United States letter-box in said city of Grand Rapids, enclosed in an envelope, postage fully prepaid, addressed to the said Smith, Nims, Hoyt & Erwin at Mus-

kegon, Michigan, that being the place of their residence and business; that on the same day he served a notice, of which the attached notice is a true copy, together with a true copy of the attached affidavit, on M. Brown, Esq., attorney for defendant Dowling in the within-entitled cause, by depositing the same in a United States letter-box at said city of Grand Rapids, enclosed in an envelope, postage fully prepaid, addressed to said Brown at Big Rapids, Michigan, that being the residence of said Brown.

CHARLES M. WILSON.

Subscribed and sworn to before me this 18th day of February, A. D. 1884.

[NOTARIAL SEAL.] WALTER H. HUGHES,
Notary Public, Kent County, Michigan.

98 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 3.

Stipulated that the time for taking the deposition- in the above-entitled cause of John S. Learoyd and George O. Sawyer, of the city of Boston, Suffolk county, State of Massachusetts, which *has* heretofore been noticed to be taken on the 4th day of March next, before Henry G. Nichols, at his office, in said city of Boston, be, and the same is hereby, postponed to the 25th day of March aforesaid, at the same hour and place.

Dated Feb'y 26th, 1884.

JOHN E. MORE, *Att'y for Pl'ff.*
T. J. O'BRIEN, *Att'y for Def't E. P. Ferry.*
M. BROWN, *Att'y for Def't Dowling.*
SMITH, NIMS, HOYT & ERWIN,
Att'ys for Def't White.

99 UNITED STATES OF AMERICA.

DISTRICT OF MASSACHUSETTS, } *ss:*
State of Massachusetts, County of Suffolk, }

Be it remembered that on this twenty-fifth day of March, A. D. 1884, by adjournment by stipulation hereto annexed, I, Henry G. Nichols, notary public in and for said county of Suffolk, did call and cause to be and appear personally before me, at my office, at number forty (40) Water street, in the city of Boston, in said district, county, and State, John S. Learoyd, of the city of Boston aforesaid, to testify and the truth to say on the part and behalf of the plaintiff in a certain suit or matter in controversy now depending

and undetermined in the circuit court of the United States for the sixth circuit and western district of Michigan, southern division, at the city of Grand Rapids, in said western district of Michigan, wherein The National Exchange Bank of Boston, Massachusetts, is plaintiff and Frank H. White, George E. Dowling, Edward P. Ferry, and Thomas W. Ferry are defendants (the cause being number two (2) of the title just recited), and it appearing by the affidavit which is hereto attached that reasonable notice——

And the testimony of said witness in causes one and two of the same title as this cause not being finished, I adjourned the examination from day to day until Thursday, the twenty-seventh day of March, 1884, at my office, number forty (40) Water street, in Boston aforesaid.

And at said last-named time and place the said JOHN S. LEAROYD, being about the age of fifty, and having by me first been cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy aforesaid, being examined upon oral interrogatories by B. F. BROOKS, Esq., appearing on behalf of the said plaintiff, did thereupon depose, testify, and say as follows:

Int. 1. What is your name, age, residence, and occupation?

100 Answer. John S. Learoyd; fifty-one; cashier of Nat'l Exchange Bank of Boston; residence, Danvers, Massachusetts.

Int. 2. How long have you been cashier of the Nat'l Exchange Bank of Boston?

Answer. Three years and a half last past.

Int. 3. Please examine the letter now shown you, addressed to you, dated Jan'y 15, 1883, marked "Exhibit 1," and to be annexed to your deposition, and state when, if ever, you received it.

Answer. I received it on the 19th day of January, 1883.

Letter produced and put in evidence and marked "Exhibit 1" and to be annexed to this deposition.

(Defendant Dowling's counsel objects to introduction of same in evidence as being incompetent, irrelevant, and immaterial.)

Int. 4. Please state when, if ever, you received the note mentioned in said letter.

Answer. Received it on January 19th, 1883.

Int. 5. Please describe said note, giving the names of promissors and endorsers thereon and the date thereof.

(Defendant Dowling's counsel objects to the question as being incompetent.)

Answer. Name of promissor is F. H. White & Co.; name of endorser is Ferry & Bro.; amount, $5,391.90; date, January 15th, 1883; time, four months.

Int. 6. State whether at the time of receiving said note you made in the course of your business any memorandum of the same; and, if so, what.

Answer. I made a cover for the note and computed the discount.

(Defendant Dowling's counsel objects to part of question calling for contents of the memorandum as being incompetent.)

Int. 7. State what, if anything, you did with and in respect
101 to said note, and when.

Answer. On January 19th, 1883, I made a cover for the note, giving the name of the promissor and endorser, the date of the note, time of the note and the date upon which it was discounted, and the time which the note had to run, the amount of the note, amount of the discount, and the net.

(Defendant Dowling's counsel moves to strike out the answer as being incompetent.)

Int. 8. Will you please produce the said cover, to be marked "Exhibit 2" and annexed to your deposition?

(Objected to by defendant Dowling's counsel as immaterial and incompetent.)

Answer. I produce it.

Said cover produced and put in evidence and marked "Exhibit 2" and to be annexed to this deposition.

Int. 9. Please state whether said note was discounted and when and by whom and all you know about the transaction.

Answer. It was discounted on Jan'y 19th, 1883, by myself as discount clerk of the National Exchange Bank of Boston, and the proceeds were passed to the credit of Ferry & Bro. on the books of the bank on the twenty-second day of January, 1883.

(Defendant Dowling's counsel moves to strike out that part of witness' answer referring to passing the proceeds of the note to the credit of Ferry & Bro., the same being incompetent.)

Int. 10. State whether any entry of the note was made upon any book of the plaintiff. If so, please point out the entry, state in whose handwriting it is, what the entry is, and read the entry and state on what book it is entered.

(Objected to by defendant Dowling's counsel so far as question calls for reading of the entry in evidence by the witness, as
102 being incompetent, irrelevant, and immaterial, said entry and the book containing it being the book of the plaintiff and made in its interest and not admissible in evidence in this case.)

Answer. An entry of said note is made in the book called Discount Record, letter M, of the National Exchange Bank of Boston, page 245, under head, Discount No. 45, as follows, and I now read it to the magistrate: May 15–18; 105; F. H. White & Co.; Ferry & Bro.; 5,391.90; 106.94; 5,824.96. It is all in my handwriting.

Int. 11. When was said entry made?

Answer. I couldn't give the exact day, only that it was some time between Jan'y 15 and Jan'y 22, 1883, inclusive.

Int. 12. How near the time of the discount was the entry made?

Answer. Within a day or two.

Int. 13. What was your custom as regards the time of making entry with reference to the time of discount?

(Defendant Dowling's counsel objects to question as being incompetent, irrelevant, and immaterial.)

Answer. Ordinarily they would be entered up the same day, but sometimes, there being a press of work, they are not.

Int. 14. Do you know whether this entry was made on the same day or on what day it was made?

(Defendant Dowling's counsel objects to question as immaterial.)

Answer. I do not know the exact day.

Int. 15. State whether the entry is made in different columns and explain each entry, and state whether the same is correct and true or how otherwise.

(Defendant Dowling's counsel objects to question as being incompetent, irrelevant, and immaterial.)

Answer. The entry is made in columns, on same horizontal
103 line. The first column, in which is May 15–18, is for the due date; the second column, in which is 105, is for the number of the note; the third column, in which is F. H. White & Co., is for the promissor of the note; the fourth and fifth columns, in which is Ferry & Bro., are for the endorser and the person who has the discount; the sixth column, in which is 5,391.90, is for the amount of the note; the seventh column, in which is 106.94, is for the amount of discount; the eighth column, in which is 5,284.96, is for the net proceeds of the note.

Int. 16. State whether that entry was made among other discounts and whether the same was made in the ordinary course of business and whether there was anything extraordinary or unusual about the entry; if so, what.

(Defendant Dowling's counsel makes the same objection as to the last question.)

Answer. The entry is made among other discounts and in the ordinary course of business and there is nothing unusual or extraordinary about the entry.

Int. 17. Please examine the paper now shown you, marked "Exhibit 3" and to be annexed to your deposition, and state when, if ever, you received it and what you did with or in respect to it.

(Same objection as to last question by same counsel.)

Answer. I didn't receive it; I made it. I passed it through the usual channels that it might reach the book-keeper for credit.

Int. 18. Please state whether the proceeds of said discount were ever entered to the credit of said Ferry & Bro.; and, if so, what the entry is, in what book it is, by whom made, and in whose handwriting, and read the entry.

(Same objection as last above by same counsel.)

Answer. They were, in book called Balances No. 11, January, 1883, A to J, of the National Exchange Bank. The
104 entry is made by George O. Sawyer, Jr., the book-keeper, and in his handwriting, and I now read it and it is as follows: Ferry & Bro.; 5,284.96, dis.; Jan'y 22, 1883. That is all the entry in reference to the discount.

Int. 19. Please explain each item of said entry.

(Same objection as to last question by defendant Dowling's counsel.)

Answer. Ferry & Bro. is printed with other names and is the name of a party who keeps an account at the bank. 5,284.66 dis. is a discount under date January 22, 1883.

Int. 20. A discount to whose credit?

(Objected to by defendant Dowling's counsel for same reason as last question.)

Answer. To the credit of Ferry & Bro.

Int. 21. Did you ever see said Sawyer write, and do you know his handwriting?

Answer. I have seen him write, and do know his handwriting.

Int. 22. Please state whether said entry is among other entries and is in the usual course of business or whether the same is out of the ordinary course and extraordinary and unusual.

(Objected to by defendant Dowling's counsel as being incompetent, irrelevant, and immaterial.)

Answer. It is among other entries and in the ordinary course of business and is not extraordinary or unusual.

Int. 23. Do you know anything about the health of said Sawyer; if so, what?

Answer. He is now sick, and has been away from the bank about ten days with hemorrhage, and as soon as able will be obliged to go south by advice of physician.

Int. 24. Please state whether he is able to attend to any business.

Answer. He is not able.

105 Int. 25. Please state whether you personally made up the discount of said note and whether you know independently of the books what the amount of the discount was. If so, please state what the amount was.

Answer. I did make up the discount and do know what the amount was independently of the books, and the amount was $5,284.96.

Int. 26. Please state whether there was anything irregular or out of the ordinary course of business of the bank in the discount of this note.

(Objected to by defendant Dowling's counsel as incompetent, irrelevant, and immaterial.)

Answer. There was nothing irregular in the discounting of this note.

Int. 27. State whether the two books entries in which you have testified to were produced here by the plaintiff and examined by you in giving your testimony.

Answer. They are, and have been examined by me in giving my testimony.

The plaintiff offers the books aforesaid to be identified by the magistrate and offered in evidence at the trial.

Books produced and marked respectively "Plaintiff's Book 1, Exhibit No. 4," and with magistrate's initials and the date M'ch 27, '84, and "Plaintiff's Book 2, Exhibit No. 5," and with magistrate's initials and date M'ch 27, '84.

Cross-examination:

And upon being cross-examined upon oral cross-interrogatories by said M. BROWN, Esq., appearing in behalf of the defendant Dowling, did depose, testify, and say as follows:

X Int. 1. State whether, independent of the books and memoranda which you have examined here, you have a recollection of the discount of the note in question in this suit.

Answer. I have not.

X Int. 2. Was not the business that was done by Ferry & Bro. with the plaintiff at the time and before and after the discount of the note in question in this suit almost exclusively that of borrowing money by discounting paper?

106

Answer. I couldn't tell without full examination of the books.

X Int. 3. I limit the time of the last question to the month of January, 1883.

Answer. The only credit for the month of January was this discount.

X Int. 4. What *was* the credits for the month of December, 1882?

Answer. There were three discounts.

X Int. 5. Who were the promissors of the notes discounted in December, 1882?

(Objected to by plaintiff's counsel as calling for evidence irrelevant, immaterial, and incompetent.)

Answer. J. H. Lasley & Co., Ottawa Iron Works Co., F. H. White & Co.

(Objected to by plaintiff's counsel as above and because notes not produced.)

X Int. 6. Were th-se several notes endorsed by Ferry & Bro.?

(Same objection by plaintiff's counsel.)

Answer. They were.

X Int. 7. What was the balance of Ferry & Bro. on the books of the plaintiff at the close of business on the 20th day of January, 1883?

Answer. ($1,381.71) thirteen hundred and eighty-one and $\frac{71}{100}$ dollars.

X Int. 8. What day of the week was the 21st day of January?

Answer. Tuesday.

X Int. 9. What was the balance of Ferry & Bro. on the books of the plaintiff at the close of business on the 22nd day of January, 1883?

Answer. ($1,226.51) twelve hundred twenty-six & $\frac{51}{100}$ dollars.

X Int. 10. What was the balance of Ferry & Bro. on the books of the plaintiff at the close of business on the 23rd day of January, 1883?

Answer. ($1,226.51) twelve hundred twenty-six and $\frac{51}{100}$ dollars.

X Int. 11. Please state whether any paper discounted by Ferry & Bro. at the bank of the plaintiff came due on the 22nd or 23rd days of January, 1883; and, if so, who were the promissors named in it.

107 Answer. By the discount record a note of F. H. White & Co. for $5,440.16 matured on January 22nd, 1883. I cannot tell anything about January 23rd.

X Int. 12. If the note upon which this suit was brought was discounted on the 19th day of January, 1883, why were the proceeds of it not credited to Ferry & Bro. on that day?

Answer. Because we did not always credit notes on the day they were discounted. The press of business would lead me to keep them.

X Int. 13. Then if Ferry & Bro. had made a check against the proceeds of this note on the day that it was discounted such check would have been dishonored by the plaintiff.

Answer. It would have been paid.

X Int. 14. At the time the note upon which this suit is brought was discounted by the plaintiff did you have any discretion in discounting notes that were discounted by the plaintiff for its customers?

Answer. I did not have any discretion.

X Int. 15. Did you ever have any such discretion during the time that you have been cashier of the plaintiff?

Answer. I never had.

X Int. 16. Who did have that discretion as to discounting notes for the plaintiff at the time the note upon which this suit is brought was discounted? State his name.

Answer. Any director has discretion about discounting a note, including the president.

X Int. 17. Was "Exhibit 2" written by you at the time you discounted the note in question in this suit?

Answer. It was so written.

108 Redirect examination:

And upon being re-examined by said B. F. Brooks, Esq., did depose, testify, and say as follows:

Re. Int. 1. In getting your information for your answer to the fourth and fifth cross-interrogatories what books did you refer to?

Answer. I referred to book called Balances No. 10, January, 1882, A–J, of the National Exchange Bank of Boston.

R. Int. 2. For what?

Answer. To ascertain the credits to the account of Ferry & Bro.

R. Int. 3. Independent of the entries in said books, do you know what the credits were?

Answer. I do.

R. Int. 4. How?

Answer. By the examination of the covers of the notes which were discounted to make the credits.

R. Int. 5. Independent of the books and of the minutes on the covers, do you know what the credits were or what notes were discounted?

Answer. I could trace them through the discount record.

R. Int. 6. And then would you know what they were independent of the discount record?

Answer. I don't understand the question.

R. Int. 7. Would you know what these discounts were without the information in the discount record?

Answer. I should know if I could find tickets for the discounts.

R. Int. 8. And then would you depend on the tickets for the information?

Answer. No.

R. Int. 9. What would you depend on?

Answer. The cover of the note.

109 R. Int. 10. Independent of the entries of the books, the covers of the notes, and the discount tickets, would you know what the discounts were of J. H. Lasley & Co., Ottawa Iron Works Co., and F. H. White & Co., to which you referred as having been made in December, 1882?

Answer. No.

R. Int. 11. Were the notes in the covers at the time you referred to them?

Answer. They were not.

R. Int. 12. Have you any knowledge of their having been endorsed by Ferry & Bro., except information on the said covers and tickets and entries in said books?

Answer. From my method of discounting I should say that they were endorsed by Ferry & Bro.

R. Int. 13. Does that explanation apply to the note in suit?

Answer. It does.

R. Int. 14. You stated in answer to 9th X interrogatory the balance of Ferry & Bro. on January 22, 1883, as $1,226.51. Where did you get that information?

Answer. From a book called Balances No. 11, January, 1883, A to J, of the National Exchange bank.

R. Int. 15. Please point out the entry to which you referred.

Answer. I now point it out.

R. Int. 16. Is it on the same horizontal line with the entry of the discount of the note in suit, and in whose handwriting is it?

(Objected to as incompetent, irrelevant, and immaterial by defendant Dowling's counsel.)

Answer. It is on the same horizontal line and is in the handwriting of George O. Sawyer, Jr.

R. Int. 17. In your answer to the 11th X interrogatory you
110 give the amount of $5,440.16 as amount of promissory note of F. H. White & Co., maturing on January 22, 1883. Have you any knowledge in regard to that note, except what you find in the discount record, referred to in your answer, and the entry on said horizontal line in the balance book? If you obtained your information elsewhere in answering said interrogatory please state it.

Answer. I have no knowledge.

R. Int. 18. In whose handwriting is said entry on said horizontal line in said book of balances of $5,440.16?

Answer. George O. Sawyer, Jr., book-keeper.

R. Int. 19. What is the entry in the next column on said horizontal line, in whose handwriting is it made, and what is your explanation of it?

(Objected to by defendant Dowling's counsel as incompetent, irrelevant, and immaterial and as improper re-examination.)

Answer. $5,284.96. It is a discount—the discount of which I have spoken before.

R. Int. 20. Please state what the entry on said horizontal line of $5,440.16 shows and explain the said entry.

Answer. It is an entry showing that a check was charged to their account of that amount that day.

R. Int. 21. What, in the ordinary course of business, was done with checks drawn on the bank?

(Objected to as irrelevant, incompetent, and immaterial by defendant Dowling's counsel.)

Answer. Returned to the parties who drew them.

R. Int. 22. Do you know what became of this check for $5,440.16 and where it is now?

Answer. I do not.

111 R. Int. 23. In whose handwriting are the entries in the book of balances to which you referred in making your answers in respect to the discounts made in the month — December, 1882?

Answer. George O. Sawyer, Jr., book-keeper.

Recross-examination:

And upon being further cross-examined by said M. BROWN, Esq., did depose, testify, and say as follows:

R. X Int. 1. In giving your answer to the question asked you in relation to page 245 of the discount book of the plaintiff and of number of discount, 105, of the note in question in this suit did you give all the writing upon the horizontal line upon which said discount appears in said book? If not, please give the same.

(Objected to by plaintiff's counsel as improper subject of recross-examination, the same not having been opened.)

Answer. I gave all there was written there appertaining to the note in question.

JOHN S. LEAROYD.

"EXHIBIT 1," H. G. N. M'ch 27, '84.

Thos. W. Ferry. Edw'd P. Ferry.

Ferry & Bro., manufacturers and dealers in lumber & shingles.

GRAND HAVEN, MICH., *Jan'y* 15, 1883.

J. S. Learoyd, Esq., cash'r, Boston, Mass.

DEAR SIR: We enclose F. H. White & Co. note at 4 mo., f'm 15, $5,391.90, which please discount and pass proceeds to credit with advice, and oblige truly yours,

5,284.96. FERRY & BRO.
06. THOMSON.

112

45 | 105.
May 15.| 18.
F. H. White & Co.
Ferry & Bro.
5,391 90
106 94
5,284 96

Jan. 15 to Jan. 19.
3–29.
107 84
90
106 94

Montague, Mich. Sure. | Pro. 206.

May 18, 1883.

Champlin & More, G'd Rapids, Mich.

"Exhibit 2," H. G. N. M'ch 27, '84.

Jan. 22, '83.
Dis.
5,284.96.
Ferry & Bro.

Exhibit 3, H. G. N. M'ch 27, '84.

113 UNITED STATES OF AMERICA, } ss:
District of Massachusetts, }

I, Henry G. Nichols, a notary public in and for the county of Suffolk, State of Massachusetts, do hereby certify that the reason for taking the foregoing deposition is that the witness lives and did live at the time of taking deposition in the State of Massachusetts, the same being at a greater distance than one hundred miles from the city of Grand Rapids, in the State of Michigan, where the court at which it is expected that the cause in the caption of said deposition will be tried was appointed by law to be held, to wit, more than one hundred miles therefrom, as appears by the affidavit of John E. More hereto attached.

I further certify that on the twenty-fifth day of March, A. D. 1884, and thereafter from day to day until said deposition was completed, I was attended, at my office, at number forty (40) Water street, in the city of Boston, in said county of Suffolk, by B. F. Brooks, Esq., in behalf of the plaintiff in said cause, and by M. Brown, Esq., in behalf of the defendant Dowling, no one appearing in behalf of the other defendants or either of them, and by the said witness John S. Learoyd, and the witness was by me carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and was examined on oral interrogatories by the said B. F. Brooks, Esq., and cross-examined orally by the said M. Brown, Esq., and the deposition was by me reduced to writing in the presence of the said witness and from his statements and after carefully reading the same to the said witness he subscribed the same in my presence.

I have retained the said deposition in my possession for the purpose of sealing up and directing the same, with this certificate of the reason atoresaid for taking said deposition, with my own
114 hand to the court for which the same were taken.

And I do further certify that the witness George O. Sawyer, mentioned in the affidavit of notice of taking testimony hereto attached, was prevented by sudden and serious illness from attending and giving testimony in the said cause.

And I do further certify that I am not of counsel or attorney for either of the parties in said deposition and caption named or in any way interested in the event of the said cause.

In testimony whereof I have hereunto set my hand and notarial seal this twenty-seventh day of March, A. D. 1884.

[NOTARIAL SEAL.] HENRY G. NICHOLS,
Notary Public.

[Endorsed:] No. 1853. United States circuit court for the western district of Michigan, so. div. The Nat. Exchange Bank of Boston *vs.* Frank H. White *et al.* No. 3. Deposition of John S. Learoyd. Opened by order of the court April 11, 1884. H. M. H., cl'k.

115 No. 1853.

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON, Plaintiff,
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY, Defendants. } (No. 1853.)

Deposition on behalf of the plaintiff in the above-entitled suit taken before me & sealed up by me & by me directed and transmitted to the clerk of the above-named court.

No. 3. HENRY G. NICHOLS,
Notary Public.

To HENRY M. HINSDILL, Esq.,
Clerk of the Circuit Court of the United States for the Western District of Michigan, Grand Rapids, Michigan.

[Written across the face:] Rec'd & filed this 10th day of April, A. D. 1884. H. M. Hinsdill, clerk.

[Written across the face in red ink:] Opened by order of the court April 11th, 1884. H. M. Hinsdill, cl'k.

116 March Term, A. D. 1884.

FRIDAY, *April 11th*, 1884.

The court met pursuant to adjournment.

Present: The Honorable Solomon L. Withey, district judge.

NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, & EDWARD P. FERRY. } (Case No. 3.) No. 1853.

In this cause, on application of John E. More, attorney for the plaintiff, it is—

Ordered that the depositions heretofore received and filed in this cause, taken before Henry G. Nichols, at Boston, Mass., in behalf of said plaintiff be, and the same are hereby, opened.

117 March Term, A. D. 1884.

FRIDAY, *April* 18*th*.

The court met pursuant to adjournment.
Present: The Honorable Solomon L. Withey, district judge.

NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY and EDWARD P. FERRY. } No. 1853.

In this cause application having been made by defendant George E. Dowling for a continuance, the same came on to be heard, J. C. Fitz Gerald, Esq., of counsel, appearing for said Dowling and John C. More for plaintiff, and the court, after hearing said counsel—

Ordered that this cause be, and the same is hereby, continued for the term with costs, including an attorney fee of five dollars.

118 [Endorsed:] No. 1853. U. S. circuit court, western district of Michigan, southern division. The National Exchange Bank of Boston, plaintiff, *vs.* Frank H. White, George E. Dowling, Edward P. Ferry, and Thomas W. Ferry, defendants. No. 3. Note of issue. Issue joined as to White, June 16, 1883; as to Dowling, July 19, 1883; as to E. P. Ferry, June 9, 1883. Cause of action, assumpsit. John E. More, attorney for plaintiff; Smith, Nims, Hoyt & Erwin, for White; M. Brown, for Dowling; T. J. O'Brien, for E. P. Ferry, attorney for defendant. To Henry M. Hinsdill, clerk U. S. circuit court: Please place on calendar for October term. Yours, John E. More, attorney for plaintiff. Filed Sept. 17, 1884. H. M. Hinsdill, clerk.

119 October Term, A. D. 1884.

MONDAY, *November* 24.

The court met pursuant to adjournment.
Present: The Honorable Solomon L. Withey, district judge.

NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } No. 1828.

NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 1839.

NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 1853.

After argument by counsel for the respective parties it was ordered

by the court that the above-entitled causes, being docket numbers 1828, 1839, and 1853, be, and they are hereby, consolidated; and, the same coming on for trial, the following jury was called and sworn, to wit, George C. Nelson, D. J. Doomink, Sullivan Armstrong, Wilson Jones, Lysander T. Beckwith, George W. Thayer, Martin H. Dailey, Samuel Toby, Ambrose A. Stevens, F. W. Worden, Thomas Greenley, and S. O. Kingsbury, who sat together in the jury seats and listened to the evidence this day adduced.

120 October Term, A. D. 1884.

TUESDAY, *November* 25, 1884.

The court met pursuant to adjournment.

Present: The Honorable Solomon L. Withey, district judge.

NATIONAL EXCHANGE BANK OF BOSTON *vs.* FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 1853, Consolidated with Causes Nos. 1828 and 1839.

The jury heretofore empaneled in this cause sat together in the jury seats and, after listening to the evidence and arguments of counsel and the charge of the court, without leaving their seats, say upon their oaths that the defendants Edward P. Ferry and Thomas W. Ferry did undertake and promise in manner and form as the said plaintiff hath in its declaration alleged, and they assess the damages of the said plaintiff on occasion of the premises at the sum of seventeen thousand one hundred twenty-two and $\frac{10}{100}$ dollars ($17,122.10) over and above its costs and charges.

And the said jurors further say that they find the defendants George E. Dowling and Frank H. White did not undertake and promise in manner and form as the said plaintiff hath in its declaration complained against them.

Therefore it is considered that the said plaintiff do recover against said defendants Edward P. Ferry and Thomas W. Ferry its damages by the jurors in form aforesaid assessed, with interest thereon from date hereof at the rate of six per cent. per annum, together with its costs and charges, to be taxed, and that it have execution therefor.

And it is further considered that as to the defendants George E. Dowling and Frank H. White the said plaintiff take nothing
121 by its said suit, and that the said defendants George E. Dowling and Frank H. White do recover against the said plaintiff their costs and *and* charges by them about their defence in this behalf expended, to be taxed, and that said George E. Dowling and Frank H. White have execution therefor.

122 *Subpœna.*

Circuit Court of the United States of America for the Sixth Circuit and Western District of Michigan.

The President of the United States of America to Isaac M. Weston:

You are hereby commanded that, laying aside all and singular

your business and excuses, you be and appear in the circuit court of the United States for the sixth circuit and western district of Michigan, at the United States court-rooms, in the city of Grand Rapids, in said district, on Tuesday, the 25th day of November, A. D. 1884, at ten o'clock a. m. of said day, then and there to testify and give evidence in a case to be tried, wherein The National Exchange Bank of Boston is plaintiff and Frank H. White, George E. Dowling, Edward P. Ferry, and Thomas W. Ferry are defendants, on behalf of said plaintiff.

Hereof fail not, under the penalty of what may befall you thereon.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 24th day of November, in the year of our Lord one thousand eight hundred and eighty-four.

[SEAL.]

HENRY M. HINSDILL, *Clerk*,
By —— ——, *Deputy*.

[Endorsed:] No. 1853. Circuit court of the United States for the sixth circuit and western district of Michigan. The National Exchange Bank of Boston *vs.* Frank H. White *et al.* Subpœna. Returnable the 25th day of November, A. D. 1884. Filed Nov. 25, A. D. 1884. John McQuewan, dep. clerk. John E. More, att'y for plaintiff.

WESTERN DISTRICT OF MICHIGAN, *ss*:

I hereby certify and return that on the 24th day of November, A. D. 1884, I served the within writ upon the within-named Isaac M. Weston by reading to *each one of them* said writ and by showing the seal of the court impressed thereon.

JAMES MONROE,
U. S. Marshal,
By A. W. ALDRICH, *Deputy*.

Travel, one miles	$ .06
Service	.50
Fees	$ .56

123 October Term, A. D. 1884.

TUESDAY, *December* 2, 1884.

The court met pursuant to adjournment.

Present: The Honorable Solomon L. Withey, district judge.

NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 1853.

On motion of John E. More, attorney for the plaintiff—

Ordered that said plaintiff have 30 days in which to move for

new trial or to settle bill of exceptions, with stay of proceedings in the meantime, except as to taxation of costs.

124 UNITED STATES OF AMERICA, *Western District of Michigan, Southern Division, Kent County,* } *ss:*

George E. Dowling, of the village of Montague, Muskegon county, Mich., being duly sworn, deposes that on the 19th day of November, A. D. 1884, he served the annexed subpœna upon Frank H. White, therein named, by reading the same to him and showing him the seal of the court impressed thereon, and at the same time paying him the sum of seven & $\frac{50}{100}$ dollars for one day's attendance. Said White resides at said village of Montague, which is sixty miles by the usual- traveled route from the place where the court named in said subpœna is held.

And further says not.

GEORGE E. DOWLING.

Subscribed and sworn to before me this 8th day of Dec., 1887.

CHARLES CHANDLER,
Notary Public, Kent Co., Mich.

125 *Subpœna.*

UNITED STATES OF AMERICA :

Circuit Court of the United States for the Western District of Michigan, Southern Division.

The President of the United States of America to Frank H. White:

You are hereby commanded that, laying aside all and singular your business and excuses, you be and appear in the circuit court of the United States for the sixth circuit and western district of Michigan, at the United States court-rooms, in the city of Grand Rapids, in said district, on Monday, the 24th day of November, A. D. 1884, at 10 o'clock a. m. of said day, then and there to testify and give evidence in a case to be tried, wherein The National Exchange Bank of Boston, Massachusetts, — plaintiff and George E. Dowling, impleaded with Edward P. Ferry and Frank H. White, — defendant-, on behalf of said defendant-, and bring with you the copartnership agreement between Edward P. Ferry, George E. Dowling, and Frank H. White.

Hereof fail not, under the penalty of what may befall you thereon.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said [SEAL.] court, at Grand Rapids, this 17 day of November, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and ninth.

HENRY M. HINSDILL, *Clerk.*

7.50. Served Nov. 19th, 1884.

[Endorsed:] No. 1853. Circuit court of the United States, western district of Michigan, southern division. Nat. Exchange Bank of Boston *vs.* Geo. E. Dowling, impleaded, &c. Subpœna. Filed Dec. 24, A. D. 18-4. H. M. Hinsdill, clerk.

126 *Subpœna.*

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Western District of Michigan, Southern Division.

The President of the United States of America to Andrew Thompson:

You are hereby commanded that, laying aside all and singular your business and excuses, you be and appear in the circuit court of the United States for the sixth circuit and western district of Michigan, at the United States court-rooms, in the city of Grand Rapids, in said district, on Monday, the 24th day of November, A. D. 1884, at two o'clock p. m. of said day, then and there to testify and give evidence in a case to be tried, wherein National Exchange Bank of Boston is plaintiff and Frank H. White, George E. Dowling, Edward P. Ferry and Thomas W. Ferry are defendants, on behalf of said defendant George E. Dowling.

Hereof fail not, under the penalty of what may befall you thereon.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said [SEAL.] court, at Grand Rapids, this 19th day of November, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States of America the one hundred and ninth.

HENRY M. HINSDILL, *Clerk*,
By JOHN McQUEWAN, *Deputy*.

[Endorsed:] No. 1853. Circuit court of the United States, western district of Michigan, southern division. National Exchange Bank of Boston *vs.* Frank H. White *et al.* Subpœna. Filed Dec. 24, A. D. 1884. H. M. Hinsdill, clerk.

WESTERN DISTRICT OF MICHIGAN, *ss*:

Allen C. Adsit, being duly sworn, says that on the 22d day of November, A. D. 1884, he served the within writ upon the within-named Andrew Thompson by reading to each one of them said writ and by showing the seal of the court impressed thereon.

ALLEN C. ADSIT.

Subscribed & sworn to before me this 2d day of December, 1884.

CHAS. CHANDLER,
Notary Public, Kent Co., Mich.

127 *Taxed Bill of Costs.*

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
GEORGE E. DOWLING, Impleaded with Frank H. White, Edward P. Ferry, and Thomas W. Ferry.

Nos. 1, 2, & 3, Consolidated. Defendant Dowling's Bill of Costs.

Attorney's fee by statute $20 00

Witnesses' fees:

	Residence.	Miles travel.	Days.		
William Peck	Montague	60	1		
Frank H. White	"	60	2	$3 00	
Andrew Thompson	Grand Haven	32	2	6 20	
George D. Sisson	Spring Lake	30	1		
					9 20
Affidavit to fee bill					25
Total					$29 45

THE UNITED STATES OF AMERICA, *Western District of Michigan, Southern Division,* } ss:

I hereby tax the foregoing bill of costs of defendant Dowling at the sum of nine & $\frac{45}{100}$ dollars and attorney fee of defendants Dowling & White at twenty dollars.

Dated Dec. 24, 1884.

H. M. HINSDILL, *Clerk.*

[Endorsed:] No. 1853. Circuit court of the United States for the sixth circuit and western district of Michigan, southern division. The National Exchange Bank of Boston *vs.* George E. Dowling, impleaded with White *et al.* Defendant Dowling's taxed bill of costs.

Def't Dowling's costs taxed	9 45
And def't Dowling and White's at	20 00
	29 45

Filed Dec. 24, A. D. 1884. H. M. Hinsdill, clerk. M. Brown, att'y for def't Dowling.

THE UNITED STATES OF AMERICA, *Western District of Michigan, Southern Division,* } ss:

George E. Dowling, being duly sworn, says that the foregoing

items of cost charged as disbursements have actually been paid, or the liability therefor incurred, and were necessary and are reasonable in amount; that the witnesses above named were in good faith made to attend and were deemed material and necessary, and they respectively traveled the number of miles and actually attended the number of days specified; that such of the witnesses as were not sworn were not because of the ruling of the court making it unnecessary for the defendant Dowling to make his defence to the jury.

GEO. E. DOWLING.

Sworn to and subscribed before me this 26th day of November, A. D. 1884.

CHARLES CHANDLER,
Notary Public, Kent Co., Mich.

To John E. More, Esq., att'y for pl'ff:

Take notice that the foregoing is a copy of the defendant Dowling's bill of costs proposed to be taxed, and of the affidavits to be read in support thereof, and that application will be made to the clerk of the said court to tax the same, at his office, on the first day of December, A. D. 1884, at 10 o'clock a. m.

Dated this 26th day of November, A. D. 1884.

M. BROWN,
Att'y for the Def't Dowling.

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } ss:

Allen C. Adsit, being duly sworn, says that on the 26th day of November, A. D. 1884, at 3½ o'clock p. m., he served a copy of the above bill of costs, affidavit, and notice of application for taxation upon John E. More, attorney for the plaintiff, by delivering the same to Charles Wilson, who was in charge of said More's office.

ALLEN C. ADSIT.

Sworn to and subscribed before me this 26th day of November, A. D. 1884.

CHARLES CHANDLER,
Notary Public, Kent Co., Mich.

128 October Term, A. D. 1884.

WEDNESDAY, *December* 31.

The court met pursuant to adjournment.

Present: The Honorable Solomon L. Withey, district judge.

NATIONAL EXCHANGE BANK OF BOSTON *vs.* FRANK H. WHITE, GEORGE E. DOWLING, Edward P. Ferry, and Thomas W. Ferry.	No. 1853 Consolidated with Causes Nos. 1828 and 1839.

In this cause, on motion of John E. More, attorney for plaintiff—Ordered that the time heretofore — in which to move for a new trial

or to settle bill of exceptions be, and the same is hereby, extended thirty days.

129 *Taxed Bill of Costs.*

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY.
} Plaintiff's Bill of Costs. 1853.

Attorney's fee by statute		$20 00
Marshal's fees:	Serving declarations	13 62
	" writ of garnishment	6 52
	" subpœna on Thompson & Weston	4 68
Clerk's fees		13 80

Witnesses' fees:

	Miles travel.	Days.		
Andrew Thomson	64	1	$4 70	
Isaac M. Weston	2	1	1 60	
E. R. Corderly	200	2	13 00	
				19 30
Total				$77 92

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } ss:

I hereby tax the foregoing bill of costs at the sum of seventy-seven & $\frac{92}{100}$ dollars.
Dated Jan'y 13, 1885.

H. M. HINSDILL, *Clerk.*

[Endorsed:] No. 1853. Circuit court of the United States for the sixth circuit and western district of Michigan, southern division. The National Exchange Bank of Boston *vs.* Frank H. White *et al.* No. 3. Plaintiff's taxed bill of costs. Plaintiff's costs taxed at $77.92. Filed Jan'y 13, A. D. 1885. H. M. Hinsdill, clerk. John E. More, att'y for plaintiff.

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } ss:

John E. More, attorney for plaintiff, being duly sworn, says that the witnesses above named were in good faith made to attend and were deemed material and necessary, and they respectively traveled

the number of miles and actually attended the number of days specified.

JOHN E. MORE.

Sworn to and subscribed before me this 6th day of January, A. D. 1885.

CHAS. M. WILSON,
Notary Public, Kent County, Mich.

To J. J. O'Brien, Esq., attorney for defendant E. P. Ferry:

Take notice that the foregoing is a copy of the plaintiff's bill of costs proposed to be taxed and of the affidavits to be read in support thereof, and that application will be made to the clerk of the said court to tax the same, at his office, on the 12th day of January, A. D. 1885, at two o'clock p. m.

Dated this 5th day of January, A. D. 1885.

JOHN E. MORE,
Attorney for the Plaintiff.

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } ss:

Charles M. Wilson, being duly sworn, says that on the 6th day of January, A. D. 1885, at 11¼ o'clock a. m., he served a copy of the above bill of costs, affidavit, and notice of application for taxation upon T. J. O'Brien, attorney for the defendant E. P. Ferry, by delivering the same to him personally.

CHARLES M. WILSON.

Sworn to and subscribed before me this 12th day of January, A. D. 1885.

H. M. HINSDILL,
U. S. Com'r.

130 October Term, A. D. 1884.

FRIDAY, *January* 30.

The court met pursuant to adjournment.

Present: The Honorable Solomon L. Withey, district judge.

NATIONAL EXCHANGE BANK OF BOSTON *vs.* FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY and EDWARD P. FERRY.	No. 1853, Consolidated with Causes Nos. 1828 and 1839.

In this cause, on application of L. D. Norris, Esq., ordered that the time heretofore given in which to move for new trial or settle bill of exceptions be, and the same is hereby, extended thirty days.

131 The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } No. 3. 1853.

Stipulated herein that Norris & Uhl may be substituted in the place and stead of John E. More as attorneys for plaintiff.

Feb'y 5th, 1885.

JOHN E. MORE,
Attorney for Plaintiff.

[Endorsed:] No. 1853. U. S. cir. court, W. D. Mich. National Exchange Bank *vs.* Frank H. White. Stipulation for substitution of attorneys. Filed Feb'y 10, 1885. H. M. Hinsdill, clerk. Norris & Uhl, pl'ff's att'ys.

132 October Term, A. D. 1884.

NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } No. 3 (1853).

DATED FEB'Y 10, '85.

In this cause, on filing the written consent of John E. More thereto and on motion of said John E. More—

Ordered that Norris & Uhl be, and they hereby are, substituted in place of said John E. More as attorneys for the plaintiff herein.

JOHN E. MORE,
Pl'ff's Att'ys.

133 October Term, A. D. 1884.

SATURDAY, *February* 14, 1885.

The court met pursuant to adjournment.

Present: The Honorable Solomon L. Withey, district judge.

NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } No. 1853.

In this cause, at the request of defendants' attorneys—

Ordered that the time to present amendments to finding be extended until March 3rd, at 2 p. m.

134 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON, Plaintiff,
vs.
FRANK H. WHITE, GEORGE E. Dowling, Edward P. Ferry, and Thomas W. Ferry, Defendants.

Three Causes Having the Same Title, Numbered on the Clerk's Docket 1829, 1838, 1853, Consolidated by Order of the Court Nov. 24th, 1884.

WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, *Kent County*, } *ss:*

Lyman D. Norris, being duly sworn, deposes and says that he is one of the attorneys for the plaintiff in the above-entitled causes; that as counsel for the plaintiff he was present and assisted upon the trial of the said causes, and that he knows the facts in relation thereto; that the said three causes, being between the same parties and involving the same issues to be tried, came on for trial before the said court on the 24th day of November, 1884, and thereupon the said court, after argument, did order that the said three causes be consolidated and tried as one cause, and, in accordance with such order, said causes were tried as one cause on the 24th and 25th days of November, 1884, and thereupon, upon the conclusion of the evidence and the arguments of counsel, the said court did then and there instruct the jury before whom said causes were tried to render a verdict against Edward P. Ferry and Thomas W. Ferry, two of the defendants, for the sum of $17,122.10 and in favor of the defendants Frank H. White and George E. Dowling for no
135 cause of action; to which direction and ruling of the said court the plaintiff, by its counsel, did then and there except.

Deponent further says that during the progress of the said trial the said court did make divers other rulings upon points of law and upon the admission and exclusion of evidence offered upon the said trial against the objection of the said plaintiff's counsel, and to which said rulings the plaintiff, by its counsel, did then and there except.

That after the trial of said causes and the rendition of the verdict and entry of the judgment aforesaid and on the 2nd day of December, 1884, the said court, upon the application of counsel for the plaintiff, did grant to the said plaintiff thirty days in which the said plaintiff might make a motion for a new trial or present a bill of exceptions to the said court for settlement; and afterwards and on the 31st day of December, 1884, the said court, upon further application of said plaintiff, did further enlarge the time for moving for new trial and presenting bill of exceptions for 30 days from and after the 1st day of January, 1885; and afterwards and on, to wit, January 30th, 1885, the said court, upon further application by the said plaintiff, did further enlarge the time for moving for said

new trial or presenting said bill of exceptions for 30 days from and after the 31st day of January, 1885.

That on the 14th day of February, 1885, and within the time limited therefor by the order of court aforesaid deponent did personally present to the late district judge, Solomon L. Withey, plaintiff's bill of exceptions to be settled in accordance with the rules and practice of the court in order that the said causes might
136 thereafter in due course be brought before the Supreme Court of the United States upon writ of error in accordance with the orders of the plaintiff given to deponent.

That copies of said bill of exceptions were previously served upon the attorneys for the defendants in these causes in accordance with the practice of the court; that on said fourteenth day of February, 1885, the said court, upon application of the defendants, did grant to the said defendants to and including the 3rd day of March next following in which to present amendments to the said bill of exceptions, and that afterwards and on or about the 2nd day of March, 1885, the said defendants, in accordance with the rules and practice of this court, did present to the said court their amendments to the said proposed bill of exceptions, and on the 3rd day of March, 1885, did serve a copy of the said amendments upon the attorneys for the plaintiff; that thereafter the late district judge, Solomon L. Withey, took the settlement of said bill of exceptions and amendments proposed thereto under advisement; that shortly thereafter the said late district judge was taken ill and became and was unable to settle the said bill of exceptions and so failed to do prior to his death.

That the said late district judge departed this life on or about the 28th day of April, 1886, without having settled the said bill of exceptions; that there was no official stenographer upon the trial of said causes, and that there is now no means existing whereby said bill of exceptions may be settled and the plaintiff have its writ of error to the Supreme Court of the United States, to which
137 by law it is entitled, for which reason said plaintiff asks a new trial herein.

LYMAN D. NORRIS.

Subscribed and sworn to before me this 12 day of June, A. D. 1886.

EDMUND D. BARRY,
Notary Public, Kent County, Michigan.

UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON, Plaintiff,
vs.
FRANK H. WHITE, GEORGE E. Dowling, Edward P. Ferry, and Thomas W. Ferry.

Three Causes Having the Same Title, Numbered on the Clerk's Docket 1829, 1838, 1853, Consolidated by Order of the Court Nov. 24th, 1884.

And now comes the said plaintiff, by Norris & Uhl, its attorneys, and moves the court to set aside, vacate, and hold for naught the verdict and judgment heretofore entered on the 25th day of November, 1884, rendered and entered in these causes, and to grant unto the plaintiff a new trial of the said causes for the reason that the late district judge, Solomon L. Withey, had not prior to his decease settled and signed the plaintiff's bill of exceptions presented to him for that purpose under the rules and practice of the court on the 14th day of February, 1885.

This motion is based on the files, records, and proceedings in these causes and on the affidavit of Lyman D. Norris, one of the attorneys for the plaintiff, on file herein.

Dated June 14, 1886.

NORRIS & UHL,
Plaintiff's Att'ys.

138 To Mess. Smith, Nims, Hoyt & Erwin, att'ys for def't Frank H. White; M. Brown, att'y for George E. Dowling; T. J. O'Brien, att'y for Edward P. Ferry.

GENTLEMEN: Please to take notice that the foregoing is a copy of a motion this day entered in the above-entitled causes and of the affidavit of Lyman D. Norris in support thereof, and that the said motion will be brought up for hearing before the said court on the 23rd day of June, 1886, at the opening of the court on that day, or as soon thereafter as counsel can be heard.

Dated June 14th, 1886.

NORRIS & UHL,
Att'ys for Plaintiff.

STATE OF MICHIGAN, *Kent County,* } *ss:*

Mark Norris, being duly sworn, says that on the 14th day of June, 1886, he served a true copy of the foregoing notice, motion, and affidavit on T. J. O'Brien, attorney for defendant E. P. Ferry, by delivering the same to J. H. Campbell, clerk to said O'Brien, at said O'Brien's office, in Grand Rapids, Michigan, and a like copy of the same papers on M. Brown, attorney for Geo. E. Dowling, by mailing the same postpaid to said Brown at Big Rapids, Mich., that being his residence and place of business, and a like copy of the same papers on Smith, Nims, Hoyt & Erwin, att'ys for Frank H. White,

by mailing the same postpaid to them at Muskegon, Mich., that being their place of residence and business.

MARK NORRIS.

Subscribed and sworn to before me July 6th, 1886.

JOHN McQUEWAN,
Notary Public, Kent Co., Mich.

[Endorsed:] No. 1853. The U. S. circuit court, W. D., S. D. of Mich. National Exchange Bank of Boston *vs.* Frank H. White *et al.* Affidavit and motion for new trial, notice, &c. Filed June 14, 1886. John McQuewan, dep. clerk. Norris & Uhl, for plaintiff.

139 March Term, A. D. 1886.

THURSDAY, *July* 1.

The court met pursuant to adjournment.
Present: The Honorable Henry F. Severens, district judge.

THE NATIONAL EXCHANGE BANK OF BOSTON *vs.* FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY.	3 Causes Consolidated. No. 1853.

This cause came on to be heard on motion to set aside, vacate, and hold for naught the verdict and judgment heretofore entered herein on the 25th day of November, 1884, and to grant a new trial therein; and the court, after hearing L. D. Norris, Esq., for plaintiff, in support of motion, and Charles Chandler, for defendant Dowling—

Ordered that said motion be, and the same is hereby, granted.

140 [Endorsed:] No. 1853. U. S. circuit court, western district of Michigan, southern division. National Exchange Bank of Boston, plaintiff, *vs.* Frank H. White, George E. Dowling, Edward P. Ferry, and Thomas W. Ferry, defendants. Note of issue. Issue joined July 20, 1883. Cause of action, assumpsit. Norris & Uhl, attorney- for plaintiff; Smith, Nims, Hoyt & Erwin, for def't White; M. Brown, for def't Dowling; T. J. O'Brien, attorney for defendant, for E. P. Ferry. To Henry M. Hinsdill, clerk U. S. circuit court: Please place on calendar for October term, 1886. Yours, &c., Norris & Uhl, attorneys for pl'ff. Filed Sept. 18, 1886. H. M. Hinsdill, clerk.

141 October Term, A. D. 1886.

TUESDAY, *October* 19, 1886.

The court met pursuant to adjournment.

Present: The Honorable Henry F. Severens, district judge.

NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } No. 1853.

In this cause appeared the counsel for the respective parties, and in open court, having consented thereto—

Ordered that the trial of said cause be postponed until December 14, 1886.

142 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON, Pl'ff,
vs.
GEORGE E. DOWLING, FRANK H. WHITE, EDWARD P. FERRY, and THOMAS W. FERRY, Def'ts.

STATE OF MICHIGAN,
Western District of Michigan and Kent County, } *ss:*

George E. Dowling, one of the above-named defendants, being duly sworn, says that Hon. M. Brown, his attorney in this cause, and who has had the preparation for trial of his defense in said cause, is, as he is informed and believes to be true, sick and confined to his bed and under the charge of his physician, and that he will not be able to attend to the trial of said cause on the 14th inst., and he asks that the trial of said cause may be postponed to the 21st of December inst., to enable him to have the assistance of his said attorney on the trial thereof.

GEO. E. DOWLING.

Subscribed and sworn to before me this 10th day of December, A. D. 1886.

CHARLES CHANDLER,
Notary Public, Kent Co., Mich.

[Endorsed:] No. 1853. The circuit court of the United States for the 6th cir't and western district of Michigan, southern division. The Nat'l Exchange Bank of Boston, pl'ff, *vs.* Geo. E. Dowling *et al.*, def'ts. Affidavit. Filed Dec. 10, 1886. H. M. Hinsdill, clerk. M. Brown, att'y for def't Dowling.

143 *Subpœna.*

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Western District of Michigan, Southern Division.

The President of the United States of America to Edward P. Ferry, Thomas White Ferry, and Andrew Thomson, and you and each of you, if in your custody or control or you can procure the same, will bring with you the books of account and the articles of copartnership (original or copy) of the firm of F. H. White & Co., & also the books of account & correspondence of the firm of Ferry Bros. showing its business deal- with said firm of F. H. White & Co. from its organization, in 1873, to February, 1884:

You are hereby commanded that, laying aside all and singular your business and excuses, you be and appear in the circuit court of the United States for the sixth circuit and western district of Michigan, at the United States court-rooms, in the city of Grand Rapids, in said district, on Tuesday, the 14th day of December, A. D. 1886, at 10 o'clock a. m. of said day, then and there to testify and give evidence & produce as aforesaid in a case to be tried, wherein The National Exchange Bank of Boston is plaintiff and Frank H. White, George E. Dowling, Edward P. Ferry, and Thomas W. Ferry are defendants, on behalf of said plaintiff. Hereof fail not under the penalty of what may befall you thereon.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said [SEAL.] court, at Grand Rapids, this 8th day of December, in the year of our Lord one thousand eight hundred and eighty-six, and of the Independence of the United States of America the one hundred and eleventh.

HENRY M. HINSDILL, *Clerk*,
By JOHN McQUEWAN, *Deputy*.

32 miles	3 20
1 day	1 50
	4 70

[Endorsed:] No. 1853. Circuit court of the United States, western district of Michigan, southern division. National Exchange Bank of Boston *vs.* Frank H. White *et al.* Original subpœna. Filed Dec. 11, A. D. 1886. H. M. Hinsdill, clerk.

WESTERN DISTRICT OF MICHIGAN, *ss*:

I hereby certify and return that on the ninth day of December, A. D. 1886, I served the within subpœna upon Thomas White Ferry, within named, by delivering to him a true copy thereof and showing him this original, with the seal of the court impressed

thereon, and by paying him four dollars and seventy cents for travel and attendance:

Travel, 32 miles	$1 92
Service, 3	1 50
Fees	3 42
3 copies, 4 folios each, ordered by pl'ff's att'y, at 10 cts. per folio, 40 cts. each	1 20
Total fee	4 62

D. R. WATERS, *U. S. Marshal*,
By CHARLES CHRISTMAS,
Deputy Sheriff, Ottawa Co., Mich.

WESTERN DISTRICT OF MICHIGAN, *ss:*

I hereby certify and return that on the 8th day of December, A. D. 1886, at Grand Haven, I served the within subpœna upon Andrew Thomson and Edward P. Ferry by delivering to each of them a copy thereof and showing each of them this original writ, with the seal of the court endorsed thereon as hereon impressed, and by paying to each of them the sum of $4.70 for travel and attendance.

D. R. WATERS,
U. S. Marshal.

144 October Term, A. D. 1886.

TUESDAY, *December* 21, 1886.

The court met pursuant to adjournment.
Present: The Honorable Henry F. Severens, district judge.

NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } No. 1853.

This cause coming on for trial, the following jury was called and sworn, to wit: Zenas G. Winsor, George A. Field, Rolla Pelton, H. Gaylord Holt, Elon G. Eaton, B. C. Tracy, A. A. Stevens, A. C. Prince, John Powell, Henry H. Winsor, Thomas Greenley, and Gersham Powers, who sat together in the jury seats; thereupon, upon application and by consent of counsel for the respective parties in open court, it is—

Ordered that Charles H. Bender be appointed reporter in this cause, and that a transcript of his stenographic notes constitute the official record of the testimony taken herein; and the said jury listened to the evidence this day adduced.

145 October Term, A. D. 1886.

WEDNESDAY, *December* 22, 1886.

The court met pursuant to adjournment.
Present: The Honorable Henry F. Severens, district judge.

NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } No. 1853.

The jury heretofore empannelled in this cause sat together in the jury seats and listened to the evidence and the arguments of counsel this day adduced.

146 October Term, A. D. 1886.

THURSDAY, *December* 23, 1886.

The court met pursuant to adjournment.
Present: The Honorable Henry F. Severens, district judge.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY. } No. 1853.

The jury heretofore empanelled in this cause sat together in the jury seats and heard the conclusion of the evidence therein and the arguments of counsel and without leaving their seats, by direction of the court, say upon their oaths that the said defendants did undertake and promise in manner and form as the said plaintiff hath in its declaration alleged and assess the damages of said plaintiff at the sum of seventeen thousand seven hundred and ninety-one & $\frac{45}{100}$ dollars ($17,791.45) over and above its costs and charges.

Therefore it is considered that said plaintiff do recover of the said defendant its damages as aforesaid assessed, together with its costs and charges, to be taxed, and that it have execution therefor; and it being represented to the court by counsel for the defendants White and Dowling that an application for a new trial will be made in their behalf, it is ordered that the time for settling the bill of exceptions in this cause be, and the same is hereby, extended until sixty days after such motion for a new trial shall have been decided, and that all proceedings to collect the judgment this day rendered, except the taxation of costs, be stayed for the period of forty-two days, being the time prescribed by statute in which a motion for a new trial may be made.

147 *Computation of Amount Due on Notes in Suit in Nat. Ex. Bank of Boston vs. F. H. White & Co. Dec.* 21, '86.

No. 1.

Due Feb'y 20th, 1883. Principal	$5,288 75
6% to Dec. 21, '86—3 y. 10 mo. 1 da.	1,217 11
Total	$6,505 86

No. 2.

Due Mar. 30, '83. Principal		$5,100 73
6% to Dec. 21, '86—3 y. 8 mo. 21 da.		1,139 85
		6,240 58

No. 3.

Due May 18, '83. Principal		$5,391 90
6% to Dec. 21, '86—3 y. 7 mo. 3 da.		1,161 75
		$6,553 65

No. 1	$6,505 86
No. 2	6,240 58
No. 3	6,553 65
Grand total	$19,300 09
$2.06 each protest fees	6 18
	$19,306 27

148	Prin. Feb'y 20th, 1883				$5,288 75
	6 % to Dec. 21, 1886—3 yr. 10 mo. 1 da.				1,217 11
					$6,505 86
5,000		3	900		
		10	250		
		1		83	
200		3	36	(I.)	
		10	10		
		1		03	
88		3	15	84	
		10	4	40	
		1		01	
			$1,217	11	
	Prin. Mar. 30, '83				$5,100 73
	6 % to Dec. 21, '86—3 yr. 8 mo. 21 da.				1,139 85
					$6,240 58
5,000		3	900		
		8	200	(II.)	
		21	17	50	
100		3	18		
		8	4		
		21		35	
			1,139	85	
149	Prin. May 18, '83				5,391 90
	6 % to Dec. 21, '86—3 yr. 7 mo. 3 da.				1,161 75
					$6,553 65

5,000	3	900		
	7	175		
	3	2	50	(III.)
300	3	54		
	7	10	50	
	3		15	
91	3	16	38	
	7	3	19	
	3		03	
		$1,161	75	

I	$6,505 86
II	6,240 58
III	6,553 65
	$19,300 09

[Endorsed:] No. 1853. Nat. Ex. B'k of Boston *vs.* F. H. White *et al.* Filed Dec. 23d, '86. H. M. Hinsdill, clerk.

150 Circuit Court, West. Dist. Mich., So. Div.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
F. H. WHITE & Co. and FERRY & BRO.

The court is of the opinion that upon proof of the misappropriation and unlawful use of the notes sued on, in transferring them by the endorsement of Ferry & Bro. to the plaintiff in contravention of the rights of the non-assenting members of the firm of F. H. White & Co., the burden of proof was cast upon the plaintiff of showing that it is a *bona fide* holder of the notes, and that it received them before maturity for a valuable consideration.

Smith *vs.* Sac County, 11 Wal., 139.
Stewart *vs.* Lansing, 104 U. S., 505.

The plaintiffs have offered evidence in support of that burden; that proof is not contradicted and no circumstances appear in the case to discredit it, and it appears to the court that a verdict contrary to this evidence could not be supported, and that therefore an express direction from the court must be given to find in accordance with such uncontradicted testimony.

Orleans *vs.* Platt, 99 U. S., 676.
Improvement Co. *vs.* Munson, 14 Wal., 442.
Walbrun *vs.* Babbitt, 16 Wal, 577.
Arthur *vs.* Morgan, 112 U. S., 495.
County of Macon *vs.* Shores, 97 U. S., 272.

The notes appear to have been signed in blank and delivered to Ferry & Bro. to be filled up, and this was done so that when they

were endorsed to and discounted by the plaintiff they were
151 in complete form, with no indications of any defect in their execution.

This being so, the court holds that in the hands of the plaintiff they are valid securities and unaffected by the circumstance that they were signed in blank. Such facts imply an authority to fill up the blank.

Michigan Bank *vs.* Eldred, 9 Wal., 544.
Goodman *vs.* Simonds, 20 How., 361.

The articles of copartnership of F. H. White & Co. were admitted as part of the cross-examination of the witness called to prove that copartnership and who testified that he had seen them. It not appearing that their contents were known to the plaintiffs, they are not affected by the articles, and the nature of that copartnership is to be determined by what it assumed to the public to be and by its mode of doing business.

Winship *vs.* United States Bank, 5 Pet., 529.
Michigan Bank *vs.* Eldred, 9 Wal., 544.

That whenever a copartnership adopts and is engaged in a course of business in which the use of its commercial paper, such as these notes are, is appropriate and reasonably to be expected, or does in fact make use of it with the common knowledge of the members of the firm, whenever the convenience or necessities of the firm may require, then the firm is liable upon commercial paper made in its name by one of its members to one who takes it *bona fide*, in the usual course of business, before maturity and for a valuable consideration, notwithstanding any fraud of the partner making the paper or misappropriation by him to other uses than those of his firm.

The court holds that such liability is not restricted to the
152 case of a trading copartnership if by that term is intended one engaged in the business of buying and selling, though it would, as a rule, include such, but extends to all cases where the nature of the business fairly and reasonably implies such use as an appropriate incident thereto, or where the actual course of business pursued adopts the practice of issuing the mercantile paper of the firm to accom-odate its necessities or convenience whenever the occasions occur, and such occasions do in fact occur and are thus provided for.

Kimbro *vs.* Bullitt, 22 How., 256.
Irwin *v.* Williar, 110 U. S., 499, 505.
Johnson *vs.* Dutton, 27 Ala., 245.
McGregor *vs.* Cleveland, 5 Wend., 475.

That if the making of mercantile paper of the firm by one of its members under any circumstances is permissible and consistent with the rights of the other members of the firm, the authority must be presumed in favor of a *bona fide* holder.

Gelpcke *vs.* Dubuque, 1 Wal., 175, 203, and cases there cited.

Although Gelpcke *vs.* Dubuque was an action upon municipal bonds, the principle there stated seems applicable, those things being changed which should be. It must be presumed that the defendants White and Dowling are cognizant of the matters which were evidenced by their own partnership books and of the transactions therein disclosed.

If the court were to submit to the jury in this case the question of fact whether the firm of F. H. White & Co. did so conduct its business as to impliedly authorize the making of firm paper by one of its members for any purpose, it would be its duty to in-
153 struct them that if they should give credit to the evidence of the defendants and their books and the undisputed evidence from the bank books at Whitehall, their verdict must be for the plaintiff.

The court does not deem it proper to submit the question under such circumstances.

GENTLEMEN OF THE JURY: Regretting very much that these defendants White and Dowling, who alone make defence here, are in such a situation that they must suffer from the wrong-doing of their associate, the court is unable to relieve them without violating principles of law which are essential to the security of mercantile business and violating also the rights of parties innocent of the wrong.

As there is, in the opinion of the court, no question of fact about which there is any conflict in the evidence, the court holds that, giving effect to the testimony, the plaintiff is entitled to a verdict and you are instructed to find accordingly against all the defendants.

The amount due on the notes, according to the computation stated in your hearing and as I understand not disputed, is $19,306.27, but upon the suggestion of the court of a doubt whether the amount of the last balance standing on the plaintiff's books to the credit of Ferry & Bro., being that of Jan. 22nd, 1883, amounting to 1,226.51, which, with the interest thereon, is $1,514.82, ought not to be deducted, the plaintiff's counsel consents thereto, and this, according to the computation of counsel, leaves $17,791.45 as the amount for which the verdict should be rendered.

[Endorsed:] No. 1853. Circuit court U. S., west. dist. Mich., so. div. Exchange Nat. Bank *vs.* F. H. White & Co. and Ferry & Bro. Opinion of the court and instructions to the jury. Filed Dec. 23, 1886. H. M. Hinsdill, clerk.

154 UNITED STATES OF AMERICA, }
Commonwealth of Massachusetts. }

Chas. F. Thayer, notary public. $5,288.75. F. H. White & Co.

COUNTY OF SUFFOLK, }
City of Boston, } *ss:*

On this twentieth day of February, in the year of our Lord one thousand eight hundred and eighty-three, I, Chas. F. Thayer, notary

public, by lawful authority commissioned and duly qualified for said county, at the request of the cashier of the National Exchange bank, Boston, went with the original note which is hereto annexed, the time limited and grace having elapsed, and demanded payment at the National Exchange bank, Boston. The teller answered, "No funds." The note remaining unpaid, I have officially notified the endorsers of the said default by written notice sent to them by mail, prepaid, addressed to them at Grand Haven, Mich., the promissors at Montague, Mich., in each notice requiring payment.

Wherefore I, the said notary, by request as aforesaid, have protested, and by these presents do solemnly protest, against the drawer of said note, endorsers, and all others concerned therein for exchange, re-exchange, and all costs, charges, damages, and interest suffered and sustained or to be suffered and sustained by reason or in consequence of the non-payment thereof.

Thus done and protested, in Boston aforesaid,
(Notarial Seal.) and my notarial seal affixed the day and year first above written.

C. F. THAYER,
Notary Public.

Fees	2 00
Postage	06
Expenses	
Charges	$2 06

$5,288.75. MONTAGUE, MICH., *Oct.* 17*th*, 1882.

Four months after date we promise to pay to the order of Ferry & Bro. fifty-two hundred eighty-eight $\frac{75}{100}$ dollars, at the National Exchange bank, Boston, Mass., value received.

1828. F. H. WHITE & CO.

No. —. Due —.

[Written across the face in red ink:] Case No. 1828, consolidated with Nos. 1853 & 1839 Nov. 24, 1884.

[Written across the face in red ink:] P. N. P. Feb. 20, '83. 2.06. C. F. T.

[Written across the face in red ink:] Judgment entered this day, Dec. 23rd, 1886. H. M. Hinsdill, clerk.

[Endorsed:] Ferry & Bro. For collection on account of Nat'l Exchange bank, Boston. J. S. Learoyd, cashier.

155 UNITED STATES OF AMERICA, }
Commonwealth of Massachusetts. }

Chas. F. Thayer, notary public. $5,100.73. F. H. White & Co.

COUNTY OF SUFFOLK, } *ss:*
City of Boston, }

On this thirtieth day of March, in the year of our Lord one thou-

sand eight hundred and eighty-three, I, Chas. F. Thayer, notary public, by lawful authority commissioned and duly qualified for said county, at the request of the cashier of the National Exchange bank, Boston, went with the original note which is hereto annexed, the time limited and grace having elapsed, and demanded payment at the National Exchange bank, Boston. The teller answered, "No funds." The note remaining unpaid, I have officially notified the endorsers of the said default by written notice sent to them by mail, prepaid, addressed to them at Grand Haven, Mich., the promissors at Montague, Mich., in each notice requiring payment.

Wherefore I, the said notary, by request as aforesaid, have protested, and by these presents do solemnly protest, against the drawer of said note, endorsers, and all others concerned therein for exchange, re-exchange, and all costs, charges, damages, and interest suffered and sustained or to be suffered and sustained by reason or in consequence of the non-payment thereof.

(Notarial Seal.) Thus done and protested, in Boston aforesaid, and my notarial seal affixed the day and year first above written.

C. F. THAYER,
Notary Public.

Fees	2 00
Postage	06
Expenses	
Charges	$2 06

$5,100.73. MONTAGUE, MICH., *Nov. 27th*, 1882.

Four months after date we promise to pay to the order of Ferry & Bro. fifty-one hundred & $\frac{73}{100}$ dollars, at the National Exchange bank, Boston, Mass., value received.

1839. F. H. WHITE & CO.

No. —. Due —.

[Written across the face in red ink:] Case No. 1839, consolidated with Nos. 1828 & 1853 Nov. 24, 1884.

[Written across the face in red ink:] P. N. P. M'ch 30,'83. 2.06. C. F. T.

[Written across the face in red ink:] Judgment entered this day, Dec. 23rd, 1886, for $17,791.45. H. M. Hinsdill, clerk.

[Endorsed:] Ferry & Bro. For collection on account of Nat'l Exchange bank, Boston. J. S. Learoyd, cashier.

156 UNITED STATES OF AMERICA, }
Commonwealth of Massachusetts. }

Chas. F. Thayer, notary public. $5,391.90. F. H. White & Co.

COUNTY OF SUFFOLK, } ss:
City of Boston, }

On this eighteenth day of May, in the year of our Lord one thousand eight hundred and eighty-three, I, Chas. F. Thayer, notary public, by lawful authority commissioned and duly qualified for said county, at the request of the cashier of the National Exchange bank, Boston, went with the original note which is hereto annexed, the time limited and grace having elapsed, and demanded payment at the National Exchange bank, and also the Boston National bank. In each case the teller answered, "No funds." The note remaining unpaid, I have officially notified the endorsers of the said default by written notice sent to them by mail, prepaid, addressed to them at Grand Haven, Mich., the promissors at Montague, Mich., in each notice requiring payment.

Wherefore I, the said notary, by request as aforesaid, have protested, and by these presents do solemnly protest, against the drawer of said note, endorsers, and all others concerned therein for exchange, re-exchange, and all costs, charges, damages, and interest suffered and sustained or to be suffered and sustained by reason or in consequence of the non-payment thereof.

(Notarial Seal.) Thus done and protested, in Boston aforesaid, and my notarial seal affixed the day and year first above written.

C. F. THAYER,
Notary Public.

Fees	2 00
Postage	06
Expenses	
Charges	$2 06

$5,391.90. MONTAGUE, MICH., *Jan'y 15th*, 1883.

Four months after date we promise to pay to the order of Ferry & Bro. fifty-three hundred ninety-one & $\frac{90}{100}$ dollars, at the National bank, Boston, Mass., value received.

1853. F. H. WHITE & CO.

No. —. Due —.

[Written across the face in red ink:] Case No. 1853, consolidated with Nos. 1828 & 1839 Nov. 24th, 1884.

[Written across the face in red ink:] P. N. P. May 18, '83. 2.06. C. F. T.

[Written across the face in red ink:] Judgment entered this day, Dec. 23d, 1886, for $17,791.45. H. M. Hinsdill, clerk.

[Endorsed:] Ferry & Bro. For collection on account of Nat'l Exchange bank, Boston. J. S. Learoyd, cash.

157 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit, Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
GEORGE E. DOWLING, FRANK H. WHITE, EDWARD P. FERRY, and THOMAS W. FERRY.

To the judges of said court:

Your petitioner, George E. Dowling, one of the above-named defendants, respectfully petitions this honorable court to set aside the judgment in this cause and grant a new trial for the following reasons:

1st. Because said court erred in holding at the trial of this cause that the copartnership of F. H. White & Company, which was composed of the said defendants, George E. Dowling, Frank H. White, and Edward P. Ferry, was a trading firm at the time the promissory notes which constitute the subject-matter of this suit came into the hands and possession of said plaintiff.

2nd. Because the said court erred in ruling at the trial of this cause that the said copartnership of F. H. White & Company, constituted as aforesaid, was not a non-trading firm.

3rd. Because the said court erred at the trial of this cause in refusing to submit this cause to the jury and in directing a verdict in favor of said plaintiff and against said defendants, and your petitioner prays that said judgment may be set aside and a new trial granted in said cause.

GEORGE E. DOWLING,
By M. BROWN, *His Att'y.*

M. BROWN,
Att'y for Def't Dowling.
J. C. FITZ GERALD, *Of Counsel.*

[Endorsed:] No. 1853. The circuit court of the United States for the 6th circuit and western district of Michigan, southern division. The National Exchange Bank of Boston, pl'ff, *vs.* George E. Dowling *et al.*, def'ts. Petition to set aside judgment and grant a new trial. The within petition is hereby allowed to be filed. Dated Feb. 3d, 1887. H. F. Severens, dist. judge. Filed February 3rd, 1887. Charles L. Fitch, clerk. M. Brown, att'y for def't Dowling. J. C. Fitz Gerald, of counsel.

158 October Term, A. D. 1886.

MONDAY, *February* 7.

The court met pursuant to adjournment.
Present: The Honorable Henry F. Severens, district judge.

NATIONAL EXCHANGE BANK OF BOSTON *vs.* FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY.	No. 1853 Consolidated with Nos. 1828 and 1839.

In this cause the motion for a new trial, based upon the petition therefor heretofore filed herein, came on this day to be heard, and thereupon—
Ordered that the hearing of such motion be, and the same is hereby, continued.

159 March Term, A. D. 1887.

TUESDAY, *March 29th.*

The court met pursuant to adjournment.
Present: The Honorable Howell E. Jackson, circuit judge, and the Honorable Henry F. Severens, district judge.

THE NATIONAL EXCHANGE BANK OF BOSTON *vs.* FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY.	Nos. 1853, 1828, and 1839 Consolidated.

The motion heretofore made in this cause for a new trial came regularly on to be heard, and was argued by M. Brown and J. C. Fitz Gerald, attorneys for said defendant, George E. Dowling, in support of said motion, and by Messrs. Norris & Norris, attorneys for said plaintiff, in opposition thereto, and was thereupon taken by the court under advisement.

160 March Term, A. D. 1887.

WEDNESDAY, *March 30th*, 1887.

The court met pursuant to adjournment.
Present: The Honorable Howell E. Jackson, circuit judge, and the Honorable Henry F. Severens, district judge.

THE NATIONAL EXCHANGE BANK OF BOSTON *vs.* FRANK H. WHITE, GEORGE E. DOWLING, Thomas W. Ferry, and Edward P. Ferry.	Nos. 1853, 1828, and 1839 Consolidated.

In this cause the motion of the said defendant, George E. Dowling, for a new trial having been heretofore argued by counsel for the respective parties and due deliberation having been thereupon had, it is—

Ordered that said motion be, and the same hereby is, denied, and that the said plaintiff be allowed ten dollars attorney fee as the costs of this motion, and that it have execution therefor.

And on motion of M. Brown and J. C. Fitz Gerald, attorneys for said defendant, George E. Dowling, it is further ordered that said defendant have sixty days from this date in which to prepare and settle a bill of exceptions in this cause, and that in the meantime all proceedings on the part of the plaintiff in this cause, except the taxation of costs, be, and the same hereby are, stayed.

161 The Circuit Court of the United States for the West. Dist. of Michigan, S. D.

NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEO. E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY.

Stipulated that an order be entered in this cause substituting Norris & Norris as the att'ys of record for the said pl't'ff in place of the undersigned.

NORRIS & UHL,
Att'ys for the Pl't'ff.

Dated Mar. 31, 1887.

Same court and same case and entitling as first above.

Order in Common Rule Book.

On reading and filing the stipulation of Norris & Uhl, att'ys for pl't'ff in the cause, and on their motion, ordered that Norris & Norris be and are substituted as att'ys of record for the pl't'ff herein.

Dated Mar. 31, 1887.

NORRIS & UHL,
Att'ys for the Pl't'ff.

Same court, case, and entitling as first above.

The foregoing are true copies of stipulation made and order had herein, at the date above given, and we are now att'ys of record for the pl't'ff in the said case.

Dated Mar. 31, 1887.

NORRIS & NORRIS,
Att'ys for the Pl't'ff.

To Smith, Nims, Hoyt & Erwin, att'ys for F. H. White; M. Brown, att'y for Geo. E. Dowling; T. J. O'Brien, att'y for E. P. Ferry.

[Endorsed:] No. 1853. State of Michigan: U. S. circuit court, W. D., S. D. Nat. Ex. Bank *vs.* F. H. White & Co. Stipulation, order, and notice of substituting attorneys. Filed April 1st, 1887. Charles L. Fitch, clerk. Norris & Norris, att'ys for pl't'ff.

162 UNITED STATES OF AMERICA:

March Term, A. D. 1887.

The Circuit Court of the United States for the Western District of Michigan, Southern Division.

NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY.

Entered April 1st, 1887.

On reading and filing the stipulation of Norris & Uhl, att'ys for the pl'ff in the cause, and on their motion, ordered that Norris & Norris be and are substituted as att'ys of record for the pl'ff herein.

Dated Mar. 31, 1887.

NORRIS & UHL,
Att'ys for the Pl'ff.

163 The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY.

Plaintiff's Bill of Costs.

Attorney'- fees, viz:

On jury trial, first trial	$20 00	
" " " second "	20 00	
On motion for new trial	10 00	
On depositions:		
In No. 1828, depositions of John S. Learoyd and George O. Sawyer, at $2.50 each	5 00	
In No. 1839, deposition of John S. Learoyd	2 50	
In No. 1853, " " " " "	2 50	
		$60 00

Disbursements.

Clerk's fees:		
In No. 1828, to and including first trial	10 00	
In No. 1839, to and including first trial	12 50	
In No. 1853, to and including first trial	13 80	
In all three cases since first trial	6 30	
		42 60

Marshal's fees:		
In No. 1828, serving original process and mil-age	13 44	
In No. 1839, " " " " "	13 56	
In No. 1853, " " " " "	20 14	
Serving subpœna on A. Thomson and I. M. Weston, 1st trial	4 68	
Serving subpœna on T. W. and E. P. Ferry and A. Thomson, second trial	4 62	
		56 44
Stenographer'- fees:		
For attendance at the trial, 3 days, at $5.00	15 00	
For furnishing plaintiff with a copy of the notes taken on said trial, 252 folios, at — cents per folio	18 90	
		33 90
Cost of depositions:		
In No. 1828, depositions of J. S. Learoyd and Geo. O. Sawyer, 65 folios, at $.20 per folio	13 00	
In No. 1839, deposition of John S. Learoyd, 42 folios, at twenty cents per folio	8 40	
In No. 1853, deposition of John S. Learoyd, 60 folios, at twenty cents per folio	12 00	
		33 40
Witness fees, 1st trial:		
Andrew Thomson, travel from Grand Haven, 64 miles, and attendance, one day	4 70	
I. M. Weston, Grand Rapids, two miles' travel, attendance, one day	1 60	
		6 30
		232 64
164 For'd		$232 64
F. R. Cordeley, 314 miles' travel from Detroit and 2 days' attendance	18 70	
Second trial:		
Thomas W. Ferry, Grand Haven, 64 miles' travel, 1 day's attendance	4 70	
Edward P. Ferry, ditto	4 70	
Andrew Thomson, ditto	4 70	
R. Caithness, Whitehall, 128 miles' travel, and one day's attendance	7 90	
S. H. Lasley, ditto	7 90	
Affidavit to bill of costs	25	
		48 85
Total		$281 49

STATE AND WESTERN DISTRICT OF MICHIGAN, } ss :
County of Kent, }

Mark Norris, being duly sworn, says that the foregoing items of costs charged as disbursements have been paid or the liability therefor incurred and were necessary and are reasonable in amount; that the witnesses above named were in good faith made to attend and were deemed material and necessary, and they respectively traveled the number of miles and actually attended the number of days specified, and that the copies and exemplifications charged for were actually and necessarily used or necessarily or in good faith obtained for use.

MARK NORRIS.

Subscribed and sworn to before me this 31st day of March, A. D. 1887.

HETTIE B. NIXON,
Notary Public, Kent Co., Mich.

To M. Brown, att'y for def't George E. Dowling; Smith, Nims, Hoyt & Erwin, att'ys for def't Frank H. White; T. J. O'Brien, att'y for def't Edward P. Ferry.

GENTLEMEN: Take notice that the foregoing is a copy of the plaintiff's bill of costs proposed to be taxed and of the affidavits to be read in support thereof, and that application will be made to the clerk of said court to tax the same, at his office, on the 6th day of April, A. D. 1887, at 10 o'clock a. m.

Dated April 1st, 1887.

NORRIS & NORRIS,
Att'ys for the Pl't'ff.

165 STATE AND WESTERN DISTRICT OF MICHIGAN, } ss :
County of Kent, }

Mark Norris, being duly sworn, says that on the 31st day of March, A. D. 1887, at — o'clock —. m., he served a copy of the above bill of costs, affidavit, and notice of application for taxation upon M. Brown, att'y for defendant Dowling, by mailing the same to him (postpaid) at Big Rapids, Mich., his residence and place of business, and upon Smith, Nims, Hoyt & Erwin, att'ys for defendant White, by mailing the same to them (postpaid) at Muskegon Mich., their place of business, and April 1st, 1887, upon T. J. O'Brien, att'y for E. P. Ferry, by leaving the same at his office with J. H. Campbell, in charge thereof.

M. NORRIS.

Subscribed and sworn to before me April 1st, 1887.

HETTIE B. NIXON,
Notary Public, Kent Co., Mich.

I hereby tax the foregoing bill of costs at the sum of two hundred eighty-one and $\frac{49}{100}$ dollars.

Dated April 9, 1887.

JOHN McQUEWAN,
Deputy Clerk.

[Endorsed:] U. S. circuit court, W. D., S. D. Mich. No. 1853. National Exchange Bank of Boston *vs.* Frank H. White *et al.* Bill of costs. Filed April 9, 1887. John McQuewan, deputy clerk. Norris & Norris, att'ys for pl't'ff.

166 March Term, A. D. 1887.

TUESDAY, *May 24th.*

The court met pursuant to adjournment.
Present: The Honorable Henry F. Severens, district judge.

NATIONAL EXCHANGE BANK OF BOSTON *vs.* FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } Nos. 1853, 1828, and 1839 Consolidated.

In this cause, on motion of M. Brown and J. C. Fitz Gerald, attorneys for said defendant, George E. Dowling, it is ordered that the time heretofore granted in which to prepare and settle a bill of exceptions in this cause be, and the same hereby is, extended for the period of twenty days from the expiration of the time previously limited therefor.

167 March Term, A. D. 1887.

TUESDAY, *June 14th.*

The court met pursuant to adjournment.
Present: The Honorable Henry F. Severens, district judge.

NATIONAL EXCHANGE BANK OF BOSTON *vs.* FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } Nos. 1853, 1828, and 1839 Consolidated.

And now comes the said defendant, George E. Dowling, by M. Brown, his attorney, and in open court tenders for settlement and signature his proposed bill of exceptions in this cause.

And thereupon it is ordered that the said plaintiff have until the 21st day of June instant in which to propose amendments to said bill of exceptions.

168 March Term, A. D. 1887.

TUESDAY, *June 21st*, 1887.

The court met pursuant to adjournment.
Present: The Honorable Henry F. Severens, district judge.

NATIONAL EXCHANGE BANK OF BOSTON *vs.* FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } Nos. 1853, 1828, and 1839 Consolidated.

Upon application of Norris & Norris, attorneys for said plaintiff,

J. C. Fitz Gerald, of counsel for said defendant, George E. Dowling, consenting thereto, in open court—

It is ordered that the said plaintiff have fifty days from this date in which to prepare and serve amendments to the proposed bill of exceptions now on file in this cause, and that the settlement of such bill of exceptions be and is hereby extended for sixty days from this date, and in the meantime that the stay of proceedings heretofore granted in this cause remain in full force.

169 The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY.

Comes now the plaintiff, by Norris & Norris, its attorneys, and prays the court for a further extension of time to propose amendments to the bill of exceptions heretofore prepared and served by the defendants' counsel because of the absence of plaintiff's counsel from the lower peninsula of this State and because of their inability to prepare such exceptions by reason of such absence.

NORRIS & NORRIS,
Pl'ff's Att'ys.

To Michael Brown, att'y for def't George E. Dowling:

Please take notice that the original of the above application is this day filed in the office of the clerk of the United States circuit court, in this city, and that the same will be brought up for hearing on Tuesday, the 16th day of August, 1887, on the coming in of court that day, and that the occasion for the application in this form was the absence of the district judge from this county until the said 16th inst.

Aug. 10th, '87.

NORRIS & NORRIS,
Pl'ff's Att'ys.

[Endorsed:] No. 1853. U. S. circuit court, 6th circuit and western dist. of Mich. Nat. Ex. Bank *vs.* Frank H. White *et al.* Application for extension of time. Filed August 10, 1887. John McQuewan, deputy clerk. Norris & Norris, att'ys for pl't'ff.

170 March Term, A. D. 1887.

TUESDAY, *August 16th*, 1887.

The court met pursuant to adjournment.
Present: The Honorable Henry F. Severens, district judge.

NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY.
Nos. 1853, 1828, & 1839 Consolidated.

Upon application of Messrs. Norris & Norris, J. C. Fitz Gerald, Esq., of counsel for said defendant, consenting thereto, in open court—

It is ordered that the time for preparing and serving copies of amendments to the proposed bill of exceptions on file in this cause be, and the same is hereby, extended until the 13th day of September next, and that the time for the settlement of the bill of exceptions aforesaid be, and the same is hereby, extended until the 20th day of September next, and that in the meantime the stay of proceedings heretofore granted in this cause be continued and remain in full force.

171 March Term, A. D. 1887.

MONDAY, *September 19th*, 1887.

The court met pursuant to adjournment.
Present: Honorable Henry F. Severens, district judge.

NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY and EDWARD P. FERRY.
Nos. 1853, 1828, and 1839 Consolidated.

By consent of counsel for the respective parties it is ordered that the time heretofore allowed for settling a bill of exceptions in this cause be, and the same is hereby, extended until the third day of October next.

172 March Term, A. D. 1887.

SATURDAY, *October* 1, 1887.

The court met pursuant to adjournment.
Present: The Honorable Henry F. Severens, district judge.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY.
Nos. 1853, 1828, and 1839 Consolidated.

Appeared in open court J. C. Fitz Gerald, Esq., of counsel for said

defendant, George E. Dowling, and Messrs. Norris & Norris, attorneys for said plaintiff, and, by their consent, it is—

Ordered that the time for settlement of the bill of exceptions in this cause be, and the same is hereby, extended for the period of forty days from and after the expiration of the time previously limited therefor; and it is further ordered that the stay of proceedings heretofore granted in said cause shall, during said period of forty days, remain in full force.

173 October Term, A. D. 1887.

THURSDAY, *November* 10, 1887.

The court met pursuant to adjournment.

Present: The Honorable Henry F. Severens, district judge.

THE NATIONAL EXCHANGE BANK OF BOSTON *vs.* FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } Nos. 1853, 1828, and 1839 Consolidated.

On application of J. C. Fitz Gerald, Esq., of counsel for said defendant, George E. Dowling, it is ordered that the time heretofore granted for settling a bill of exceptions in this cause be, and the same is hereby, extended for thirty days from the expiration of the time previously limited therefor, and that in the meantime the stay of proceedings heretofore granted in this cause be continued in full force.

174 October Term, A. D. 1887.

THURSDAY, *December* 1, 1887.

The court met pursuant to adjournment.

Present: The Honorable Henry F. Severens, district judge.

THE NATIONAL EXCHANGE BANK OF BOSTON *vs.* FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY. } Nos. 1853, 1828, and 1839 Consolidated.

On application of J. C. Fitz Gerald, Esq., of counsel for said defendant, George E. Dowling, it is ordered that the time heretofore granted for the settlement of a bill of exceptions in this cause be, and the same is hereby, extended until and including the 17th day of January next.

And it is further ordered that the stay of proceedings heretofore granted in this cause in the meantime be continued in full force.

175 October Term, A. D. 1887.

WEDNESDAY, *January* 4, 1888.

The court met pursuant to adjournment.
Present: The Honorable Henry F. Severens, district judge.

NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY.
} Nos. 1853, 1828, and 1839 Consolidated.

In this cause it is ordered by the court that the time heretofore granted for the settlement of a bill of exceptions in this cause be, and the same is hereby, extended until the sixth day of March next, and that in the meantime the stay of proceedings heretofore granted in this cause continue in full force.

176 October Term, A. D. 1887.

TUESDAY, *February* 28, 1888.

The court opened pursuant to adjournment.
Present: The Honorable Henry F. Severens, district judge.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY.
} Nos. 1853, 1828, and 1839 Consolidated.

In this cause it is ordered by the court that the time heretofore granted for the settlement of a bill of exceptions in this cause be, and the same is hereby, extended until the third day of April next, and that in the meantime the stay of proceedings heretofore granted in this cause continue in full force.

177 March Term, A. D. 1888.

TUESDAY, *March* 27, 1888.

The court met pursuant to adjournment.
Present: The Honorable Henry F. Severens, district judge.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, THOMAS W. FERRY, and EDWARD P. FERRY.
} Nos. 1853, 1828, and 1839 Consolidated.

In this cause it is ordered by the court that the time heretofore granted for the settlement of a bill of exceptions in this cause be, and the same hereby is, extended for sixty days from the expiration of the period previously limited therefor, and that in the meantime the stay of proceedings heretofore granted in this cause continue in full force.

178 March Term, A. D. 1888.

TUESDAY, *May* 29, 1888.

The court met pursuant to adjournment.

Present: The Honorable Henry F. Severens, district judge.

THE NATIONAL EXCHANGE BANK OF BOSTON *vs.* FRANK H. WHITE, GEORGE E. DOWLING, Thomas W. Ferry, and Edward P. Ferry.	Nos. 1853, 1828, and 1839 Consolidated.

In this cause it is ordered by the court that the time heretofore granted for the settlement of a bill of exceptions in this cause be, and the same hereby is, extended for sixty days from the time previously limited therefor, and that in the meantime the stay of proceedings heretofore granted in this cause continue in full force.

179 March Term, A. D. 1888.

TUESDAY, *July* 24, 1888.

The court met pursuant to adjournment.

Present: The Honorwble Howell E. Jackson, circuit judge, and the Honorable Henry F. Severens, district judge.

NATIONAL EXCHANGE BANK OF BOSTON *vs.* FRANK H. WHITE, GEORGE E. DOWLING, Thomas W. Ferry, and Edward P. Ferry.	Nos. 1853, 1828, and 1839 Consolidated.

In this cause it is ordered that the time for settling a bill of exceptions herein be, and the same hereby is, extended for sixty days from the expiration of the period heretofore limited therefor, and that in the meantime the stay of proceedings heretofore granted in this cause remain in full force.

180 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

NATIONAL EXCHANGE BANK OF BOSTON *vs.* FRANK H. WHITE, GEORGE E. DOWLING, EDWARD P. FERRY, and THOMAS W. FERRY.

At a session of said court held at the court-house, in the city of Grand Rapids, in said western district of Michigan, on the 23rd day of December, A. D. 1886, before the Hon. Henry F. Severns, district judge, one of the judges of the said circuit court, the issue joined between the parties came on to be tried by a jury, for that purpose duly impaneled, of lawful jurors, at which day came as well the

said parties, by their respective attorneys, and the said jurors were then and there duly chosen and sworn to try the issue aforesaid between the parties aforesaid.

The plaintiff, to maintain the issue on his part, called ANDREW THOMPSON as a witness, who, being duly sworn, testified as follows:

That he resided at Grand Haven and had for upwards of twenty years last past, and that nearly all that time he had been in the employ of Ferry Brothers as their book-keeper, and had charge of their books and papers in and about their business during that time; that he did know the firm of F. H. White & Company, and that the partners that composed that firm were Edward P. Ferry, George E. Dowling, and Frank H. White, and that the firm of Ferry Brothers was composed of Thomas W. Ferry and Edward P. Ferry, and that he had occasion, as book-keeper, on behalf of Ferry Brothers to correspond and do business with plaintiff in this case; that he knew the signature of F. H. White & Company and of Ferry Brothers as made by Edward P. Ferry.

181 Witness was thereupon shown by counsel for the plaintiff three promissory notes in words and figures following:

$5,288.75. MONTAGUE, MICH., *Oct.* 17*th*, 1882.

Four months after date we promise to pay to the order of Ferry & Bro. five thousand two hundred eighty-eight & seventy-five hundredths dollars, at the National Exchange bank, Boston, Mass., value received.

F. H. WHITE & CO.

$5,100.73. MONTAGUE, MICH., *Nov.* 27*th*, 1882.

Four months after date we promise to pay to the order of Ferry & Bro. fifty-one hundred and seventy-three hundredths dollars, at the National Exchange bank, Boston, Mass., value received.

F. H. WHITE & CO.

$5,391.90. MONTAGUE, MICH., *Jan.* 15*th*, 1883.

Four months after date we promise to pay to the order of Ferry & Bro. fifty-three hundred and ninety-one & ninety hundredths dollars, at the National — bank, Boston, Mass., value received.

F. H. WHITE & CO.

Each of which said notes was endorsed upon the back thereof "Ferry & Bro."

And the witness was thereupon asked the following question:

Q. Look at these three promissory notes I show you and see if they are signed F. H. White & Co. and endorsed Ferry Brothers?

A. Yes, sir; the signatures are signed F. H. White & Co., by Edward P. Ferry.

Q. In the handwriting of Ferry?

A. Yes, sir; the endorsements of Ferry Brothers is in the handwriting of Thomas W. Ferry all through.

And thereupon the counsel for the plaintiff offered to read the three notes aforesaid in evidence; and the counsel for the defendant George E. Dowling, before said notes were received in evidence, cross-examined said witness, who testified upon said cross-examination as follows:

I believe years ago I saw the articles of copartnership of
182 F. H. White & Company; they were in writing. The paper now shown me I believe to be the articles of copartnership of F. H. White & Company.

Which articles of copartnership were thereupon offered in evidence by said counsel for said defendant Dowling as a part of the cross-examination of said witness, and the same were received and read in evidence and were in words and figures following:

Articles of copartnership entered into this first day of February, A. D. 1873, by and between Edward P. Ferry, of Grand Haven, Michigan, and George E. Dowling & Frank H. White, of Montague, Michigan, for the purpose of carrying on the business of sawing lumber, pickets, and lath at the said village of Montague, in the steam saw-mill lately there erected, witnesseth:

1st. The name and style of the firm shall be F. H. White & Co., and said firm shall continue during the full term of five years, unless sooner dissolved by mutual consent and agreement; and should the death of either one of the partners occur during the life of this agreement the surviving partners may, at their own *opinion*, dissolve the partnership or continue the business during the full term of the time named in this agreement.

2nd. The present fixed capital of the firm is hereby determined to be $35,551.65, of which Edward P. Ferry contributed $16,804.38, George E. Dowling contributes $8,402.19, and Frank H. White contributes $8,402.19; and no part or amount of said capital shall be diverted or used otherwise than in the business by either of the partners during the life of this agreement, the profits or losses to be shared according to the respective interests, to wit: Edward P. Ferry, one-half, and George E. Dowling and Frank H. White, each one-quarter.

183 3rd. Edward P. Ferry and George E. Dowling shall have the care and charge of securing the sawing for the mill so far as they may be able to make any contracts therefore at current rates, and the supervision of the financial part of the business and the supervision of the books of said firm, to be divided between them as they may mutually agree, no charge to be made for their services. Frank H. White is to have full charge of the management of the mill in the details of the work of sawing, hireing, and discharging men and fixing their wages at current rates, according to their respective skill and capacity; to have charge and keep a set of double-entry books, which shall be open at any time for the inspection of either of the partners, and shall receive for his services the rate of one thousand dollars per annum, to be paid by the firm.

4th. The books of the firm shall be closed as of the date of Jan-

uary 31st of each and every year, and when the profits, if any, be ascertained and passed to the credit of the respective partners they shall be drawn and applied as follows, to wit: Of the proportion belonging to Dowling, and which each shall be entitled to use, and amount not exceeding fifteen hundred dollars in any one year for the payment to Edward P. Ferry of their individual indebtedness to him, and the same shall be so applied. Ferry shall be entitled to draw an amount that shall equal the amount drawn by both Dowling and White for his own disposal. The balance remaining of the profits may be used by the partners or applied to their increase of capital as shall upon consultation and agreement be deemed for the best interests of the business.

In witness whereof the parties have hereunto set their hands the day and year first above written.

EDWARD P. FERRY.
GEORGE E. DOWLING.
FRANK H. WHITE.

184 Witness on his cross-examination further testified as follows:

That the signature of F. H. White & Company is in the handwriting of E. P. Ferry; that the notes were issued at the dates on the face of them respectively, but the signatures were made before they were issued, but how long before he could not recall.

Q. In whose handwriting is the body of the note, that which is not in print?

A. In the handwriting of my wife.

Q. How did your wife come to write it?

A. At my request.

Q. State the circumstances about the notes—when they were signed and how they came to be filled up by your wife.

A. The circumstances were simply these: Thomas W. Ferry asked me not to make them out in my own handwriting, but to get some other outside party to do it.

Q. Where did you first see these notes, at the office of Ferry Brothers, at Grand Haven?

A. Yes, sir.

Q. They were blank then—notes signed in blank?

A. Signed in blank.

Q. Who gave them to you?

A. Think most of them came by mail from Utah.

Q. From E. P. Ferry?

A. Yes, sir.

Q. Thomas W. Ferry told you to have somebody else besides yourself fill up the notes?

A. Yes, sir.

Q. Did he say why?

A. No, sir.

Q. Did E. P. Ferry give you any instructions about filling up the notes?

A. No, sir.

Q. Did Mr. F. H. White know anything of the issuing of these notes, to your knowledge?

A. No, sir.

Q. Did George E. Dowling know anything of the making or issuing of these notes, to your knowledge?

A. No, sir.

Q. Neither one of them ever authorized you to fill them up?

A. No, sir.

Q. Where did you get the amount to be filled up? Was
185 it given you by Thomas W. Ferry?

A. Either that or under general instructions to make it near certain figures, varying a little. Sometimes he would direct me to come about to certain figures, and left it to my discretion what figures they might be.

Witness further testified that the endorsement of Ferry & Brother upon these notes was made by Thomas W. Ferry before they were filled up.

The counsel for the plaintiff thereupon renewed his offer to read said notes in evidence, and the counsel for the defendant George E. Dowling objected to the introduction of the same upon the grounds that the execution of the notes had not been properly proven; that from the evidence already adduced it appears that the notes were made without the knowledge or consent of Mr. Dowling or White, and it appears that this firm was a non-trading firm; that the notes were filled up without any authority from any one authorized to do so; that it did not appear that the firm were engaged in any business that authorized the partners to issue notes, and that it appears affirmatively that the partnership was a non-trading partnership.

The court thereupon overruled said objection and admitted said evidence; to which ruling and decision the counsel for the defendant George E. Dowling did then and there duly except, and said notes were thereupon read in evidence.

And thereupon the counsel for the plaintiff rested the plaintiff's case.

And thereupon the counsel for the defendant George E. Dowling, to maintain and prove the issue on his part, called as a witness the said GEORGE E. DOWLING, who, being duly sworn, testified as follows:

That he resided at Montague and had resided there twenty years or more; that he was acquainted with E. P. Ferry and F. H.
186 White; that the articles of copartnership above referred to and which have been received in evidence were the articles of copartnership under which the firm of F. H. White & Company was created and did business; that as long as the firm remained in existence they continued under such articles of copartnership precisely the same after the time had expired by limitation therein as before; that the three notes constituting the plaintiff's claim in this cause, copies of which are given above, were not nor was either of them made by him nor with his knowledge or consent; that the first information that he had of the existence of these notes or either of

them was on the 24th day of February, 1883, and then he only had knowledge of the existence of the one bearing date October 17th, 1882, and it was after the maturity of that note and the information he received in regard to what that one was that it was presented to him for payment at Montague in behalf of the plaintiff in this case, and that he did not learn of the existence of the other two notes positively until the commencement of this suit, and that he never saw them until the first trial of this case; that these notes were not nor was either of them given in the business of the firm of F. H. White & Company in any way nor for the benefit of said firm, nor did such firm ever receive any benefit whatever from said notes or either of them.

The witness further testified:

Q. You have seen the articles of copartnership under which you commenced business there. You say you carried on that business under these articles of agreement. I wish you would state whether any other business was carried on by the firm of F. H. White & Company except the business specified in the articles of agreement.

A. There never was anything else.

187 Q. Now, about sawing lumber, I wish you would state what the practice of the firm was in regard to the getting of logs to saw and the sawing of them—whether you purchased the logs or whether they were logs belonging to other people.

A. The firm was organized with a saw-mill built, ready for operation; went into the field to see if there were any logs to be manufactured into lumber; found some the first year; took them to saw by the thousand.

Q. What do you mean by sawing by the thousand?

A. Sawing for hire.

Q. So much a thousand?

A. Yes, sir; so much a thousand to pile it into lumber.

Q The logs were taken into your mill, sawed and piled?

A. The logs were delivered to us at the mill by the owner of them.

Q. And at so much a thousand you sawed the logs into lumber?

—. Yes, sir; and piled the lumber.

Q. Whether your firm of F. H. White & Company engaged in buying logs?

A. Never.

Q. Did your firm ever buy any logs?

A. No, sir.

Q. Whether your firm engaged in buying lumber at all?

A. No, sir.

Q. You say your firm of F. H. White & Company engaged in no other business except that expressed in the articles of agreement or copartnership?

A. That is all.

Q. During the year 1882—in the fall and winter of '82–'3, at the time these notes in suit bear date, were your firm doing anything at that time or had they shut down the mill?

A. I think perhaps at the date of this first note the mill was still running, sawing lumber for somebody—October 17th. I think at the date of the other two notes, Nov. 27—I am certain in regard to Dec. 12—the mill was shut down, closed up, not doing anything.

188 The witness on his cross-examination further testified as follows: That Edward P. Ferry furnished the capital to build the mill; that the firm of F. H. White and Company had an office separate from the mill, in a small building near the mill; that they kept regular books of accounts; that he did not know that the firm kept any bank account with the First Nation- Bank of Whitehall; that it never came to his knowledge that any such bank account was kept; that his connection with the firm was in a general way, having an oversight of it, securing logs to be sawed if possible; that he was frequently on the premises and occasionally in the office of the firm and had access to the books of the firm when he desired; that the books of the firm were kept by the partner Frank H. White; that the partnership articles of the firm designated himself and E. P. Ferry as the persons having charge of the financial business of the firm, and that he never knew that the firm had a bank account; that he never took occasion to inquire whether it had or not; that it might possibly have existed without his knowing of it; that they had two principal customers that they did the most work for; that their names were A. Ballard, of Chicago, and Ferry and Brother, in Grand Haven, the Ferry and Brother being the indorsers of the paper in this suit; that the firm of F. H. White and Company during its existence did not use or have any occasion to use any bank accommodations, to his knowledge, information, or belief; they had no occasion for it.

Q. Didn't you borrow money—put your notes in the bank and have them discounted to pay labor?

A. I learned some years after the firm of F. H. White and Company was dissolved that some temporary arrangement had been made on two or three occasions, but I didn't know of it at the time; that the firm did not, to his knowledge, obtain money on its

189 notes negotiated at the bank to pay its labor account.

Q. Didn't the firm make drafts of various kinds payable to various parties and have them passed or negotiated through the bank?

A. Not to my knowledge.

Q. You don't say that it was not so; you only say you don't know?

A. I say I don't know of it, and I knew of no occasion why it should be so. The firm did not buy anything, to my kno-ledge, except for use in carrying on the business. They did buy saws and belts and oil and files, horses, and lumber carts and such other things as were necessary to have about a saw-mill.

Q. Did the firm have an account, open account or current account, with any merchants in Montague or Whitehall—draw orders on them or otherwise for the payment of their labor?

To which question the counsel for the defendant George E. Dowling did then and there object upon the ground that the same was

not material; which objection the court did then and there overrule, and the counsel for the defendant did then and there duly except, and the witness answered:

A. I don't know of anything except with Ferry, Dowling & Company, another firm of which I was a member.

Q. What were they engaged in—in what business?

A. Different kinds of business; lumbering.

A. Were they dealing in merchandise?

A. Yes, sir.

Q. Selling merchandise there; had you a running account with them?

A. Possibly.

Q. Did the firm of F. H. White & Company sell anything?

A. Yes, sir; there were two horses sold at different times.

Q. Do you mean to be understood that is all that they ever sold?

A. Well, a little refuse from the saw-mill; I think that is all.

Q. You sold lath, didn't you?

—. We may have sold a very few lath.

Q. That was a product of your manufacturing; you sold it upon the market wherever you could get a chance, whatever you had?

190

A. I think not.

Q. You think you didn't sell anything?

A. I think nearly all the lath manufactured at the mill went to the parties owning the logs.

Q. The question is whether you sold any lath.

A. I presume so. I presume there was a little lath sold.

Q. Did you sell any slabs?

A. I think so; yes, sir.

Q. Did you sell any cull lumber?

A. I think there was some rubbish—waste—sold.

Q. In sawing for your customers, unless there was a special agreement made, who had the slabs that were made?

A. Well, they would follow the common custom, and that would be to go to the mill for fuel.

Q. Did you use slabs for fuel?

A. Yes, sir; and sawdust.

Q. You say you sold some slabs?

A. I presume there were some slabs sold.

Q. How long did this firm of F. H. White & Company exist? You say it was continued under the old articles of copartnership?

A. It commenced doing business the first day of February, 1873, and continued, I think, until the 31st of May, 1883. It terminated on that day, as I sold my interest in the firm.

Q. On your former examination of this case was this question asked you, referring to the firm, "Did it during its existence ever issue any promissory notes or bills of exchange, to your knowledge?" and did you answer, "Of my actual knowledge, with one exception, I can say no. I have some information that at one time during the stringency in the money market some notes were given

to the employees for a short time. That was the first year that the firm commenced business?" Is that correct?

A. Yes, sir.

Q. Was this also asked you, "Subsequent to that had any notes ever been given by the firm, to your kno-ledge?" and did you answer, "To my knowledge, no. From hearsay evidence I think some notes were given in small amounts?" Is that correct?

A. Yes, sir.

191 Q. You have heard some notes were given for small amounts?

A. All this information I got here about the time of the first trial of this case, within a few days of the time these questions were asked me.

Q. Were you also asked, "Were you informed by your partner?" and did you answer, "I was so informed"?

A. I had been informed within a few days of the time that these questions were put to me. That was the idea I intended to convey.

Q. Who was the principal business maniger of the firm of F. H. White & Company?

—. Well, after the business was started it was left principally to Mr. White.

Q. You were mostly employed in running the mill of Ferry, Dowling & Company?

A. Yes, sir; I was attending to that business?

Q. You knew but little about the affairs of this partnership?

A. Well, I did know something about it. I knew the results every year, and had an annual statement. The profits were divided principally. My time was principally employed with Ferry, Dowling & Company. Mr. White was employed in running the mill. The capacity of the mill was from fifty to sixty thousand, according to the quality of the raw material, and its average earnings per day was from one hundred to one hundred and twenty-five dollars, and its average expenses was something less than that; I could not say exactly. They employ on an average from thirty to thirty-five men.

Q. Have you never seen any checks used by your firm upon the bank?

A. No, sir; I think I never saw one.

Q. In the former trial wasn't this question asked you, "Did you pay the men by checks?" and didn't you answer, "I think I have seen a few checks upon the bank in another place," referring to the First National Bank of Whitehall?

192 A. I may have answered so. Something may have come up to me about that time that recalled a check or two. I couldn't say positively now but what I had seen one or two small checks of five or ten dollars. I think if the question was asked me as to the payment of the men I think I answered that we usually paid the men in money at the office. I don't remember whether this question was asked me before or not. It was a fact that we did pay the men in money at the office.

Witness further testified he did not think he ever made any entries in the book of the firm of F. H. White & Company.

Q. Did you ever conduct any correspondence of the firm?

A. Yes; I think I did in one or two instances, or perhaps more, in regard to one or two matters.

Q. What information did you have in regard to the business done between the mill and its customers—anything else but what you got from Mr. White in the reports made from him to you?

A. I was in daily conversation with Mr. White verbally and had frequent conversations with the customers in person, and I could judge by the number of vessels that were sent in by the customers of the firm and the amount of lumber in the dock about what the mill was doing, and that was sufficient for me at the time.

Q. Have you yourself ever received any drafts drawn by your partner, White, to your order and negotiated them upon the market?

A. No, sir.

Q. I show you three drafts drawn by F. H. White & Company on Ferry & Brother, each to your order, one bearing date February 1st, 1878, for five hundred seventy dollars and ninety-four cents; one bearing date February 10th, 1879, for three thousand forty-two dollars and six cents, and the other bearing date June 30th, 1879, for three hundred sixty-nine dollars and fifteen cents, and
193 ask you if your signature is not upon the back of them.

A. Yes, sir; that is my signature.

Q. Then you are mistaken in saying you never received any drafts drawn by your partner, White?

—. I don't think I am mistaken.

Q. You executed these papers?

A. Yes, sir.

Q. And received them from your partner?

A. Yes, sir; your question was whether I ever received any drafts and negotiated them upon the market, and I say no, and I say so now.

Counsel for the plaintiff then offered the three drafts above named in evidence, and the same were received and read in evidence.

Q. This form of letter-head was the form used by the firm of F. H. White & Company, was it not?

A. No, sir.

Q. Well, it was used by them in that particular instance, wasn't it?

A. It happened to be.

Q. That was the form of blank draft you had printed and used by the firm of F. H. White & Company, was it not?

A. Yes, sir.

Counsel for plaintiff then offered in evidence the letter-head and draft above referred to; to the introduction of each of which the counsel for the defendant Dowling objected upon the ground that the same was irrelevant unless it was brought home to the knowledge

of the plaintiff in this cause, which objection was overruled by the court; to which ruling and decision the counsel for the defendant did then and there duly except. Said letter-head and draft were then and there read in evidence to the jury, which were in the words and figures following:

F. H. White & Co., manufacturers of lumber, Montague, Mich.

JAN. 31ST, 1881.

Mess. Ferry & Bro., pay to Ferry, Dowling & Co. the sum of twenty-three hundred and twenty-five $\frac{28}{100}$ dollars; charge to—

F. H. WHITE & CO.

The witness further testified that the signature to said drafts was in the handwriting of F. H. White; that the annual
194 & 195 cut of the mill was from ten to twelve millions feet of lumber; that the annual earnings of the mill were not as much as twenty thousand dollars, net earnings; that the saw bill averaged about two and a quarter; that the gross earnings were from twenty-five to thirty thousand dollars; that he paid for his interest in the mill from the earnings of the property; that the business of the mill was profitable as long as it was running, and they divided profits every year, more or less; that about the date of these notes in suit the firm of Ferry Brothers owed the firm of F. H. White & Company for sawing logs for them between fifteen and twenty thousand dollars.

Q. Didn't Mr. E. P. Ferry draw on you at one time for three thousand dollars and at another for five thousand, and didn't you take care of it?

A. I have heard something about that since. I never knew anything about that at the time.

Q. You have heard that it was so?

A. I have heard something about it lately.

Q. Do you know whether that would be a part of that balance?

A. Well, that would be a part of that—of what the firm of F. H. White & Company owned E. P. Ferry.

Q. You accepted two drafts—one of three thousand and one of five thousand dollars; — whether that would be a part of the balance that you say was due to you the time that this paper was drawn.

A. That would not have anything to do with Ferry & Brother; that would be a transaction between F. P. White & E. P. Ferry.

Q. Didn't he draw in the name of Ferry & Brother?

A. I presume not. He drew in his own name, which he had a right to do.

Q. You knew from hearsay that he did draw?

A. I say if he did draw he would draw in the name of E. P. Ferry, which he had a right to do.

196 Q. On the firm?

A. On the firm.

Q. Do you know whether he did draw that way?

A. I only know from heresay; of my own knowledge I know nothing of it.

Q. You never examined the books?

A. Yes, sir.

Q. Would these drafts I have shown you here properly appear upon the books of the concern?

A. These orders?

Q. Yes, sir.

A. Yes, sir; think they ought to, every one of them.

The witness upon his redirect examination further testified as follows: That the three orders above referred to, bearing his endorsement, were all given in part payment of what was coming to the firm from the firm of F. H. White & Company, his dividen-s or profits from that firm; that he did not discount them in any way, but paid his debt directly with them to E. P. Ferry. At the time the partnership was formed the mill was already built. Ferry, Dowling & Company originally built the mill. The expense of it, however, was assumed by E. P. Ferry. The firm of F. H. White & Co. got the mill from E. P. Ferry, F. H. White giving his note to Ferry for one-quarter the value of the mill and the witness Dowling giving his notes to said Ferry for one-quarter, and E. P. Ferry retained the other one-half of the mill. The orders above referred to, endorsed by me, were given to E. P. Ferry towards satisfying my indebtedness on the mill through him on the purchase of the mill or some other indebtedness which I owed said Ferry. They were not negotiated nor discounted and did not pass through the bank in any shape or form. I settled directly with Ferry and gave him these *or* orders as vouchers. The order reading as follows: "F. H. White & Co., manufacturers of lumber, Montague, Mich. Dated July 21st, 1880. Messrs. Ferry & Brother will please pay the Ottawa iron works sixty-five dollars and charge to F. H. White & Co.," was given in payment of a machine-shop bill for repairs by the Ottawa
197 iron works on the mill of F. H. White & Co., and the order reading as follows: "Ferry, Dowling & Co., manufacturers and dealers in lumber, shingles, laths, and pickets. Montague, Mich., Jan. 31st, 1881. Messrs. Ferry & Bro. pay to Ferry, Dowling & Co. the sum of twenty-three hundred twenty-five and $\frac{28}{100}$ dollars. Charge to F. H. White & Co.," was given to pay Ferry, Dowling & Company in what F. H. White & Co. owed them. Such indebtedness was for many things. They did some dredging at one time, dredging out about the mill, for F. H. White & Company's mill. I, acting for Ferry, Dowling & Company, hired the dredge at Grand Haven and paid for the dredging and charged it up to F. H. White — Company. The dredging was to facilitate getting the logs into the boom and other things of that kind—matters pertaining exclusively to the carrying on of the mill of F. H. White & Company and nothing else, and the order was given for no other purpose. The draft for $369.15, endorsed by me, a copy of which is given above, was indorsed to the order of Ferry & Brother by me, I think, for something that I owed Ferry & Brother for some per-

sonal transaction at Grand Haven; and the draft of February 10th, 1879, for $3,042.06, a copy of which is given above, was turned over by me to E. P. Ferry for some of my personal indebtedness to him. It is indorsed in blank and, if I recollect right, that was a settlement made in person either at my office or his office. The draft was simply endorsed and handed over to E. P. Ferry. All the drafts that were drawn upon Ferry & Brother by the firm of F. H. White & Company were drawn against what Ferry & Brother owed F. H. White & Company for sawing and for no other purpose. F. H. White & Company never had any other account with them and they were drawn for the sole purpose of collecting the saw bill of F. H. White & Company. There were, I think, two different times between 1873 and 1883 when some small notes were given
198 by the firm of F. H. White & Company in consequence of a sort of financial panic. It was impossible to get cash here anywhere. They were given to employees about the mill for their labor. They were in small amounts. I don't think they exceeded one hundred dollars.

Q. Were these the only notes given during the existance of your firm, to your knowledge?

A. To my knowledge; yes, sir.

Q. Who were they given by?

A. By Mr. White. There was a little lath and slabs sold by F. H White & Company—refuse matter. It may have amounted to a couple of hundred dollars a year—possibly a little more. The way we came to have the lath upon our hands—there were times when the parties for whom we were manufacturing lumber and lath would not take the lath at the lath mill and pay the cost of manufacturing it and would leave them on the dock, and the company, in order to realize pay for sawing, would have to dispose of the lath, and that was the only way we came in possession of or sold lath, and that didn't occur to any great extent. There might have been some lots left at different times. I remember Mr. Balard, the party for whom we sawed extensively, refused to take them. He said they were not worth the manufacturing and he would leave them there.

Q. You stated that you heard that the defendant Edward P. Ferry drew drafts—one for $3,000 and one for $5,000 from Utah—upon F. H. White & Company. When did you first hear of that? Was it before F. H. White testified on the stand on the former trial of this case?

A. About that time.

Q. That is the first knowledge you had of it?

A. Yes, sir. It was after the dissolution of the firm of F. H. White & Company. The firm of F. H. White & Company was at that time indebted to E. P. Ferry personally—in the fall of 1882. At the time the notes in suit in this case were given the firm
199 of Ferry & Brother were indebted to F. H. White & Company in the sum of from $15,000 to 19,000. The firm of F. H. White & Company were indebted to E. P. Ferry in the fall of 1882 in the sum of about $6,000. It was not indebtedness of the firm, but Mr. Ferry's proportionate share of the profits—a share that he

would be entitled to. It was a credit to E. P. Ferry for accumulated profits. That is what I mean by being indebted; no other indebtedness to him—simply what stood there as profits.

On cross-examination witness further testified:

Q. That would show that your profits at the close of 1882 amounted to about twenty thousand dollars, of which one-half belonged to Mr. Ferry and the other half to you and Mr. White?

A. Yes, sir; that would not be all of them necessarily, but might be an accumulation of two or three years or more. It was simply the undivided profits.

Q. That is what you mean by saying indebted?

A. Yes, sir.

Q. I understand you to say it stood upon the books as $10,000 to Mr. Ferry, yourself $5,000, and Mr. White $5,000?

A. I didn't say anything about Mr. White and myself.

Q. It stood to the credit of E. Ferry upon the books of F. H. White & Company of that proportion, whatever it is—one-half interest in the profit that stood to his credit, whether it was ten thousand, more or less?

A. I think the profits were divided and passed to the credit of each partner at the close of every year; that would be the 3rd day of January.

The defendant F. H. White, further to maintain and prove the issue on his part, was then called and sworn as a witness in his own behalf and testified as follows: That he was one of the defendants and a member of the firm of F. H. White & Company; that the firm of F. H. White & Company had written articles of copartnership; that they had but one article of copartnership and continued under that article as long as they did business as partners; the articles were never changed.

Q. I will ask you the direct question: What was the business of the firm of F. H. White & Company?

A. Manufacturing lumber.

Q. Did you manufacture your own logs or for other parties?

A. No, sir; sawed for other parties.

Q. Sawed by the thousand?

A. Sawed by the thousand.

Q. Entirely for other parties?

A. Yes, sir.

Q. Was that the sole business of the firm?

A. Yes, sir.

Q. I show you these three papers—the three notes in suit—and ask you if you know who signed the name of F. H. White & Company to each of them.

A. E. P. Ferry.

Q. When did you first learn that the name of F. H. White & Company had been signed to these notes or either of them?

A. The first I knew of the notes was when they were presented for payment I never knew of the notes having been given until then. I

never authorized any person to sign the name of F. H. White & Company to said notes or either of them. I never signed them or either of them.

Upon his cross-examination the witness further testified as follows:

Q. When you were a partner in F. H. White & Company what was your particular business?

A. I was managing the mill, keeping the books, and foreman; doing the clerical work; had an office upon the dock near the mill; the books were kept at the office.

Q. At any time during the existance of the firm did the firm have a bank account?

A. Yes, sir.

Q. With what bank?

A. The Whitehall National bank—the First National Bank of Whitehall.

Q. Did you ever draw checks on it?

A. Yes, sir; I say we had a bank account—we deposited money there.

Q. Deposited your money there and drew checks on it?

A. Yes, sir.

201 Q. Regularly?

A. Yes, sir.

Q. You had letter books?

A. No, sir; we kept a journal, ledger, day book, and cash book; kept the books double entry. The firm sold slabs and a few horses and some lath.

Q. Did they sell any cull lumber?

A. Only for other parties, as their agent. We sold considerable; no great amount.

Q. In selling this cull lumber, as agent for other parties, how did you pay them?

A. Gave them credit for it on the books.

Q. How did you pay them?

A. Paid them in the settlement; parties we were sawing for.

Q. In cash or notes or checks?

A. I don't know.

Q. Did you pay them by checks, the usual method of payment?

A. I think the balance was the other way; they paid me the balance instead of my paying them.

Q. In every instance?

A. In every instance.

Q. You sold slabs?

A. Yes, sir.

Q. Did you buy any dead-head logs while you were in the business?

A. No, sir.

Q. Did you keep among the books—any papers that you had—a book of blank notes?

A. I don't think we ever had; possibly we might have had.

Q. Did you keep a book of blank drafts?

A. Yes, sir; there was one sent to us; we didn't buy it. Ferry & Brother sent it.

Q. That was in the office, open to the inspection of all the firm, was it?

A. Yes, sir.

Q. The books were open at all times to the inspection of any of the parties?

A. Yes, sir.

Counsel for the plaintiff then presented the witness with a draft, of which the following is a copy:

F. H. White & Co., lumber manufacturers.

202 $30.18. MONTAGUE, MICH., *June 20th*, 1878.

At sight pay to the order of Dennis, Smith & Co. thirty and $\frac{18}{100}$ dollars, value received, and charge the same to the account of—

F. H. WHITE & CO.

To Ferry & Bro., Grand Haven, Michigan.

Endorsed: Dennis, Smith & Co.

And asked him this question:

Q. Is that one of the form of books or blank drafts you kept in your office there, open to the inspection of all parties?

A. Yes, sir.

Q. Who is that drawn by?

A. F. H. White & Co.

Q. Who signed it?

A. I signed it.

Q. To whose order?

A. Dennis, Smith & Company.

Q. What for?

A. Supplies for the mill.

Q. What did you do with it? Did you send it to them by mail?

A. Yes, sir.

Counsel for plaintiff then presented the witness a draft in the same form as the one last above given, bearing date May 10th, 1882, for $800, drawn by F. H. White & Company on Ferry & Brother to the order of C. A. Hammon, cashier, and asked the witness the following question-:

Q. Was that drawn by you?

A. Yes, sir.

Q. What for?

A. It was drawn for money to pay the men—the orders for saw bills.

Counsel for plaintiff then showed the witness a draft upon the same form of blank as the one last above, bearing date June 20th, 1878, at sight, drawn by F. H. White & Company on said Ferry & Brother, for $28.22, payable to the order of the Northwestern Oil

Company, and the witness testified the draft was given by him in favor of the Northwestern Company for some oil; that he sent the draft to the oil company by letter.

Counsel for the plaintiff then presented to the witness another draft upon the same kind of blank as last above, bearing date
203 June 20th, 1878, drawn by F. H. White & Company on Ferry & Brother to the order of E. B. Preston, for $123.41, and the witness stated that that was given for belting used in the mill.

Counsel for the plaintiff then presented the witness with another draft upon the same kind of blank, bearing date June 20th, 1878, drawn by F. H. White & Company on Ferry & Brother to the order of C. L. Hawes, for $45, and the witness stated that that was given for friction paper used in the mill.

Q. That went through the bank also?
A. Yes, sir.
Q. And was discounted?
A. Yes, sir.

Counsel for the plaintiff then presented to the witness another draft drawn upon the same kind of blank, bearing date June 10th, 1881, drawn by F. H. White & Company on Ferry & Brother to the order of C. A. Harmon, cashier, for $1,000, and asked the witness—

Q. What was that drawn for? To raise money to pay men?
—. ——.
Q. That went through the First National Bank of Whitehall?
A. Yes, sir.

Counsel for the defendant then, interrupting, asked the witness the following questions:

Q. Do you know of your own knowledge, or as — all that you know, what appears upon the back of the paper?
A. I don't remember this particular note.

Counsel for the plaintiff, resuming, then asked the witness the following questions:

Q. That is your signature?
A. Yes, sir.
Q. Is it payable to the order of Hammond?
A. Yes, sir.
Q. And that is what it is for—to raise money to pay the men?
A. Yes, sir.

Counsel for the plaintiff then presented the witness another draft upon the same kind of blank as last above, bearing date July 16th, 1881, drawn by F. H. White & Company on E. P. Ferry &
204 Brother to the order of C. A. Hammon, cashier of the First National Bank of Whitehall, for $900, and the witness testified that that was drawn for the same purpose as last above, as he supposed, but did not remember particularly about that. He did not remember whether he did or not deposit it to the credit of the firm. The usual course was that we generally got the money; that

they didn't deposit it and check against it. The witness stated he thought he got the money upon this draft, and that he presumed all the drafts that his attention had been called to went onto the books of account of the firm.

Q. Did you, during the existance of this firm, make any promissory notes and use them, as Mr. Dowling testifies, for the purpose of the firm—for the purpose of raising wages or otherwise?

A. Yes, sir.

Q. Where were they used—where did you use them?

A. The first notes were given to the men.

Q. Where were the others used?

A. The others were used at the Whitehall bank.

Q. Do your books show trace of these notes?

A. I think so.

Q. How did the drafts for three thousand and five thousand dollars drawn by E. P. Ferry on you come to you?

A. They came through the Whitehall bank, I think.

Q. They presented them?

A. Yes, sir.

Q. How did you provide for the payment?

A. I borrowed money for it.

Q. How did you borrow the money—by your notes?

A. Yes, sir.

Q. Where did you have your notes discounted?

A. At the Whitehall bank.

Q. Now, were these transactions, the payment of the drafts, the discounting of the notes, put upon your books of account?

A. Yes, sir.

Q. These books of account were open to the inspection of the partners at any time?

A. Yes, sir.

205 The witness upon his redirect examination further testified as follows:

Q. Whether or not at the time these several drafts or orders were drawn—whether you were doing sawing for Ferry & Brother.

A. Yes, sir.

Q. What was the state of account, whether they were owing you for sawing?

—. They were owing us for sawing.

Q. You stated what the two—the one for nine hundred and the other for one thousand—were given for. As to these three orders state what you did with them after drawing them.

A. Why, I presume we paid the men; that was our pay day.

Q. You drew the orders and took the orders to the bank?

A. Yes, sir; and got the money and took it over and paid it to the men.

Q. Look at the draft of June 20th, 1878, to the order of the Northwestern Oil Company, and state what that was given for.

A. That was given for oil.

Q. To be used in the mill?
A. Yes, sir.
Q. You have to use it in the manufacture of lumber?
A. Yes, sir.
Q. One of June 20th, 1878, for Dennis, Smith & Company?
A. That was for hardware supplies for the use of the mill.
Q. The one of June 20th, 1878—E. B. Preston?
A. That was for belting.
Q. Used in the mill?
A. Yes, sir.
Q. The one of June 20th, 1878, to C. L. Hawes, for $45?
A. For friction paper to be used in the mill.

The witness upon recross-examination further testified as follows, producing books of account:

These are the books of account of F. H. White & Company.

Counsel requested the witness to turn to the account of bills payable and then asked the witness the following question-:

206 Q. This account extends from October 15th, 1873, to January, 1883, a period of ten years. How many bills payable are shown by that account issued by the firm in those ten years?
A. I think there are fifteen.
Q. Have you got the bills-receivable account there that extends from March 30th, 1882, to March, 1883?
A. Yes, sir; and covering six bills payable.
Q. The entries upon the ledger represent all the notes made by the firm of F. H. White & Company?
A. Yes, sir.

A copy of each of said accounts as the same appears on said ledger *as* hereto attached and marked Exhibit-"A" & "B" respectively; a copy of the journal entries posted into ledger accounts, which ledger accounts are represented by Exhibits A & B, is hereto attached and marked respectively Exhibits D & E.

The witness upon his redirect examination further testified as follows:

Q. Turn to the account of bills payable. You say there is some fifteen in number?
A. I think that is the number.
Q. The first one that is upon the ledger?
—. The first one is October 15th, 1873, for $225, in favor of Fisher, and it was given for wages. He was a man in the employ of the company in the mill. We gave the note because we didn't have the money to pay him. The next note is for thirty dollars, in favor of George Tricot; was given for the same purpose. He was a workman in the employ of the company in the mill. There was at that time difficulty in getting money from the bank. It was during the panic of 1873. The next bill is for $10, payable to Null; bears the same date in 1873, and was given for wages due him. The next

one is for $85, in favor of William Ake; bears date the 25th of October, 1873, and was given for wages due him. The next one is
207 for $400, March 30th, 1878, and is payable to I. M. Weston, cashier of the Lumberman's State Bank of Whitehall. That was given for expenses to repair the mill before they went to sawing—bills that came in for repairing the mill. The next one bears date April 29th, 1879. That was our note discounted at the National Bank of Whitehall for the same purpose, and is for $300; bears date March 31st, and was before the mill started. The next note is for $87.50. It was given in a horse trade. I held this note. I bought a team of him. The note was given in payment for sawing. We had done some sawing for him, and I bought a team of him and took it to the barn, and he came running down and said there was a mortgage on the team and he would have to have $87.50 to satisfy the mortgage. I let him have the money and endorsed the balance of it on the note that we held ourselves. That is the transaction. The next note is for $1,000, to A. Ballard, January 14th, 1880. We wanted some money, and we were going to saw for Ballard in the spring and wanted him to advance some. He did so, and we gave him a note as security. We wanted the advance to pay the expense of repairing the mill, and we repaired the mill at once. That was February 14th, 1880. This Ballard was the man we had contracted with for sawing. He advanced this $1,000 and we gave him the note as security for the advance. The next note was this note renewed. This Mr. Ballard lived in Chicago. The first note was January 12th and the next was February 14th. The next note was in favor of Wilson & Henry, for $699.21. It was for repairs at the mill. Wilson & Henry had a machine shop and did repairs on the mill, and we paid them by giving them the note. The next note was for $520, in favor of the Marinette iron works. It was given for a steam-feed to use in the saw-mill—part of the machinery in the mill. The next one is $800, dated April 3rd, 1880, in favor of H. D. John-
208 son for insurance upon the mill, and the next one is $2,000, June 14th, 1880. That was to get money to pay the draft of E. P. Ferry drawn upon us. We didn't have the money and I discounted the note.

Q. How did he, E. P. Ferry, come to make a draft upon you; whether there was any undivided earnings; whether he had a credit for any undivided earnings at that time?

A. Yes, sir; he had.

Q. To that amount or more?

A. Yes, sir; more than that. The next note was for $2,000, May 20th, 1881, and it was drawn in the same way and for the same purpose as the one last above, and was money borrowed for the purpose of meeting a draft, and there was undivided earnings coming to Mr. Ferry at that time in an amount exceeding that sum.

By the COURT:

Q. These notes were taken to the bank and discounted for the purpose of raising money to meet this draft?

A. Yes, sir.

By COUNSEL FOR THE DEFENDANT:

Q. The next note?

Answer. Here is one dated December 30th, 1882, discounted at the Lumberman's National bank, to pay Mr. Ferry's draft of $2,500. Mr. Ferry made a draft upon us, and we discounted the note to pay the draft at the Lumberman's National bank at Muskegon. The draft was drawn for what we owed Mr. Ferry on undivided earnings. We owed him more than that at that time. The next note was given to B. F. Weston, at 90 days, $3,000, dated January 20th, 1883, and was to pay the draft of E. P. Ferry above referred to. The next note was $663.76, June 16th, 1883, in favor of Wilson & Henry, machinists, for repairs and work done in the mill. That is all the notes given by the firm. The date of the first bill payable is December 26th, 1874.

By PLAINTIFF'S ATTORNEY:

Q. Count up the number of bills payable.

A. Twenty-two.

Q. That includes the sixth that I counted?

A. Yes.

Counsel for defendant White resuming:

209 Q. You have said you sold horses, slabs, and lath for other parties and cull lumber for other parties?

A. Yes, sir.

Q. State in what way you possessed yourself of the lath.

A. Well, they would not take the lath and pay the saw bill and left them there.

Q. And you sold the lath and applied it on the saw bill?

A. Yes, sir; lath was so low they were not worth the contract price.

Q. The lath were manufactured from the refuse and from the slabs?

A. Yes, sir.

Q. What horses were they that you sold?

A. Some old horses that had outlived their usefulness.

Q. After you used a horse and it became unfit for your purpose you would sell that and buy again?

A. Yes, sir.

Thereupon the defendants rested their case.

The counsel for the plaintiff, to further maintain and prove the issue on its part, then called as a witness Samuel H. Lasley, who testified that he was cashier for the First National Bank of Whitehall and had been since the 7th of April, 1885; that he had prepared an abstract of the account of F. H. White & Company with said bank; a summary of which said bank account is hereto attached and marked Exhibit "C," and which said summary shows the date of the checks drawn by F. H. White & Company in each month, the aggregate amount thereof; also the largest and the smallest

check; also the number of credits and the aggregate amount of such credit for each month.

The counsel for the plaintiff, further to maintain and prove the issue on its part, then read in evidence the deposition of John S. Learoyd, taken in Boston, who testified that he was 51 years of age and who was the cashier of the Exchange Bank of Boston and has been a little over three years, being 1881, '2, and '3; that a letter, of which the following was a copy, was received by him October 21st, 1882, and that he received the note mentioned in said letter
210 enclosed in the letter, and that he discounted the note the same day.

Copy of Letter.

Ferry Bro., manufacturers and dealers in lumber and shingles.

GRAND HAVEN, MICH., *Oct. 13th*, 18—.

I. S. Learoid, Esq., cashier, Boston.

DEAR SIR: We enclose F. H. White & Co. note at four mo., from the 17th, $5,288.75, which please discount and pass proceeds to credit of, advise, and oblige,

Truly yours, FERRY & BRO.
THOMPSON.

I discounted the note while acting for the bank as discount clerk, which office I filled, besides that of cashier. The proceeds of the discount was passed to the credit of Ferry & Brother the same day, and they were advised of this discount October 21st, 1882, by letter signed by the president of this bank, of which the following is a copy:

10TH, 21ST, '2.

Messrs. Ferry & Bro., Grand Haven, Mich.

GENTLEMEN: We credit your ac. $5,182.97, proceeds of note F. H. White & Co., $5,288.75, received in your letter of 10th, 18th, and discounted a- 6 per cent.

Yours truly, E. D. REED, *P't.*

The note enclosed in said letter so received by me is described as follows: F. H. White & Company were the promissors; Ferry & Brother were endorsers. The amount was $5,288.75, which was dated October 17th, 1882, due four months from date. The rate of discount was six per cent.

State whether there was anything irregular or out of the ordinary course of business in the discount of this note. If so, what?
211 There was nothing.

On his cross-examination the witness testified that they only discounted this one note for Ferry & Brother on that day, and that the plaintiff did not, to his knowledge, have any correspondence with the defendants or either of them in relation to discounts before discounting the note above referred to; that he presumed the

plaintiff had discounted notes for Ferry & Brother before this note was discounted. Ferry & Brother kept an account there at the bank at the time this note was discounted, and that he thought it was not the custom of the bank to charge Ferry & Brother's paper up to them as it matured; that Ferry & Brother have been customers of the plaintiff some portion of three years and a half last past; that he didn't know when he commenced doing business with the bank. At the time the above note was discounted the plaintiff had other paper endorsed by Ferry & Brother; at the time this note was discounted the plaintiff had a note of F. H. White & Company for $5,354, endorsed by Ferry & Brother, that became due on October 23rd, 1882.

Q. Whether any of the proceeds of the note discounted were used to pay that note maturing on the 23rd of October.

—. The proceeds of this note were passed to the credit of Ferry & Brother.

Q. Was the note that fell due on the 23rd of October, 1882, paid; and, if so, by whom?

A. I don't know.

The witness upon redirect examination further testified:

Q. Is there any entry of the discount of the note of $5,354 which you examined to make your answer?

A. There is.

Q. Is that book here?

A. It is.

Q. What is the entry?

A. October 20–23; No. 111; F. H. White & Co.; Ferry & Brother, $5,354; $107.97; $5,246.03 paid.

Q. In whose handwriting is that entry?

A. In my handwriting.

212 Q. In the same book is there any entry of the discount of the note in suit in this case? If so, what is your entry?

A. There is. It is as follows: February 17–20; No. 197; F. H. White & Co.; Ferry & Brother, $5,288.75; $105.78; $5,182.97.

Q. Please explain your answer in the cross-examination that you did not know that the note for $5,354 of F. H. White & Co. was paid.

A. That note came to me in the course of business; is paid, but by whom I don't know, nor how. I don't know what funds were used to pay that note.

Witness further testified that he received the letter dated Nov. 27th, 1882, on Dec. 1st, 1882, of which the following is a copy:

Ferry & Brother, manufacturers & dealers in lumber & shingles.

GRAND HAVEN, MICH., *Nov. 27th*, 1882.

J. S. Learoid, Esq., cashier, Boston, Mass.

DEAR SIR: We enclose for F. H. White & Co. note at four mo.

from 27th, $5,100.73, which please discount & pass proceeds to credit of, advise, & oblige,

Truly yours, FERRY & BROTHER
THOMPSON.

And that we received the note enclosed in said letter, and that we discounted the note the same day that it came into his hands for the plaintiff, and that the proceeds of such discount were placed to the credit of Ferry & Brother on December 2nd, 1882, and that he cannot say whether Ferry & Brother were advised of the discounting and the passing of the proceeds to their credit or not, as he is unable to find any copy of the letter and does not know whether any letter was sent or not. The promissors in said note were F. H. White & Company; endorsers, Ferry & Bro.; the amount, $5,100.73; date, November 22, 1882; time, four months. The net amount—the amount placed to the credit of Ferry & Brother—was $4,999.56. Such discount was entered upon the books of the bank.

213 Q. State whether that entry *were* made among other discounts, and whether the same were made in the ordinary course of business, and whether there was anything unusual or extraordinary about the entry; and, if so, what.

A. It was made among other discounts in the ordinary course of business, and there was nothing unusual or extraordinary about it.

Q. State whether there was anything irregular or out of the ordinary course of business of the bank in the discount of this note; and, if so, what.

A. There was nothing irregular or out of the ordinary course of business of the bank in the discount of this note.

The witness on his cross-examination testified as follows:

That at the close of business on the first day of December, 1882, Ferry & Brother had overdrawn their account with the plaintiff $1,972.94, and that on the 2nd day of December, 1882, after the proceeds of said discount were placed to the credit of Ferry & Brother, they had a balance in their favor of $3,026.62.

Upon his redirect examination the witness further testified as follows:

I received a letter dated January 15th, 1883, on the 19 of January, 1883. The following is a copy of said letter:

"Ferry & Bro., manufacturers and dealers in lumber and shingles.

GRAND HAVEN, MICH., *Jan'y 15th*, 1883.

I. S. Learoid, Esq., cash'r, Boston, Mass.

DEAR SIR: We enclose for F. H. White & Co. note at four mo. from 15th, $5,391.90, which please discount and pass proceeds to credit of, advise, and oblige,

Truly yours, FERRY & BRO.
THOMPSON."

The note referred to in said letter I received enclosed in the letter. The names of the promissors in said note were F. H. White & Co.; the endorsers, Ferry & Bro.; amount of note, $5,391.90; date, January 15th, 1883; time, four months. On January 19th, 1883, the plaintiff discounted said note by myself as discount clerk, and the proceeds were passed to the credit of Ferry & Brother on the books of the bank on the 22nd day of January, 1883. It was the
214 custome of the bank ordinarily to enter the discounts on the same day they were made, but sometimes, there being a press of work, they are not so entered. The entry was made among other discounts and was made in the ordinary course of business, and there is nothing unusual or extraordinary about it. The proceeds of said discount were entered to the credit of Ferry & Bro. and were as follows: $5,284.96.

Q. Please state whether there was anything irregular or out of the ordinary course of business of the bank in the discount of this note.

A. There was nothing irregular in the discounting of this note.

Upon cross-examination the witness testified as follows:

The only credit for the month of January in this bank to Ferry & Brother was this discount. The credits for the month of December, 1882, of Ferry & Brother were three discounts.

Q. Who were the promissors of the notes discounted in December, 1882, for Ferry & Brother?

A. S. H. Lasley & Co., Ottawa Iron Works & Co., F. H. White & Co.

Q. Were these several notes endorsed by Ferry & Brother?

A. They were.

Q. What was the balance of Ferry & Brother on the books of the plaintiff at the close of business on the 20th of January, 1883?

A. $1,381.11.

Q. What day of the week was the 21st of January?

A. Sunday.

Q. What was the balance of Ferry & Brother on the books of the plaintiff at the close of business on the 22nd day of January, 1883?

A. $1,226.51.

Q. What was the balance of Ferry & Brother on the books of the plaintiff at the close of business on the 23rd of January, 1883?

A. $1,226.51.

Q. What was the balance of Ferry & Brother on the books of the plaintiff at the close of business on the 23rd day of January, 1883?

A. $1,226.51.

Q. Please state whether any paper discounted by Ferry & Brother at the bank of the plaintiff came due on the 22nd or 23rd
215 day of January, 1883; and, if so, who were the promissors named in it.

A. By the discount record a note of F. H. White & Company for $5,440.16 matured on January 22nd, 1883. I can't tell anything about January 23rd.

Q. If the note upon which this suit is brought was discounted on the 19th day of January, 1883, why was the proceeds of it not credited to Ferry & Brother on that day?

A. Because we didn't always credit notes on the day they were discounted. The press of business would lead me to keep them.

The plaintiff, further to maintain and prove the issue on its *its* part, then read in evidence the deposition of GEORGE O. SAWYER taken in Boston, who testified he was 30 years of age; was book-keeper for the plaintiff and had been since October 1st, 1880, and that he had the books of entry of said bank then present; that on October 21st, 1882, he made an entry in said book to the credit of Ferry & Brother of $5,182.97, and that he had the book then present; that the entry is $5,182.97 and is for a discount passed to the credit of Ferry & Bro., and it is in the book of balance, A–J, for 1882; that the book is the property of the bank. The entry is as follows: October 21st, Ferry & Bro., 5,182.97, dis.; that he received a check for the entry of the same, in the regular course of business of the bank, from the paying teller thereof; that the entry in the book above referred to is in his own handwriting, and that it was made in the ordinary course of business.

Q. State whether anything was done by you in respect to said transaction extraordinary or unusual; and, if so, what?

A. Nothing to my knowledge at the present time. I don't remember anything.

And upon this cross-examination the witness testified that at the close of business, on the 21st of October, 1882, the balance to the credit of Ferry & Brother was $8,014.37; and on the 23rd day
216 of October, $2,660.37, and at the close of business on the 20th of October, 11'2, the balance was $2,831.40. And on his re-examination the witness further testified that all the knowledge he had of said balance was what he had learned from the examination of the books of the bank, and that on the 23rd day of October there was a check charge, $5,354.

Therefore the plaintiff rested its case.

The defendants, further to maintain the issue on their part, then recalled the witness GEORGE E. DOWLING, who testified that he never knew nor had any knowledge that the plaintiff in this case had discounted any note of F. H. White & Company, other than the notes in this suit, until he heard the deposition above referred to read, and had no knowledge of the notes in this suit above given or discounted until after their maturity; that the notes of F. H. White & Company referred to in said deposition were not nor was either of them given in the business of the firm of F. H. White & Company; that the firm of F. H. White & Company never received any benefit for said notes, and that they were issued without his knowledge or consent, and said notes were not nor were either of them issued by said firm; that the notes referred to in said depositions other than the notes in this suit, he believes, were signed by E. P. Ferry and he has never seene said notes nor either of them;

that the firm of F. H. White & Company never had any deal or business transaction whatever with the plaintiff in this suit.

And the defendant-, further to maintain the issue on their part, recalled the witness FRANK H. WHITE, who testified as follows: That he never knew anything of the notes in this suit referred to by the witness in said deposition; that if such notes were given they were given without his knowledge or consent; that he never consented to the firm's name being signed to them, and that
217 he knew nothing whatever of said notes; that the firm never received any benefit from said notes.

Thereupon the counsel for the defendants rested their case and the testimony here closed.

The above and foregoing is all the testimony given upon the trial of said case.

And the court thereupon charged and instructed the jury to render a verdict in favor of the plaintiff and against the defendants for $17,791.45; to which charge and instruction the counsel for the defendant George E. Dowling did then and there duly except.

And the said court, under the charge and instructions as aforesaid, left the issue to the said jury, and the jury then and there gave their verdict for the said plaintiff; and, inasmuch as the several matters, proceedings, rulings, and exceptions hereinbefore set forth do not appear by the record, the counsel for the defendant George E. Dowling hath duly proposed this bill of exceptions and requests that the same be signed, time for settling the same having been duly extended to this date.

And therefore the district judge, presiding judge of said court, at the request of said counsel for said defendant George E. Dowling, hath duly signed this bill of exceptions this 25th day of Sept., 1888.

H. F. SEVERENS,
Dist. Judge.

218 EXHIBIT A.

Bills Payable.

1873.							
Dec. 29.	Cash	40...	10 00	Oct. 15.	Petty ledger	38...	255 00
1874.				" " "		" ...	10 00
Jan. 31.	Balance ac..	53...	340 00	" 20. "		39...	85 00
			350 00				350 00
Feb'y 28.	Cash	55...	30 00	Feb'y 2.	Balance	54...	340 00
Mar. 31.	"	56...	40 00				
June 8.	"	64...	45 00				
Aug. 25.	"	74...	225 00				
			340 00				340 00
1878.				1878.			
Mar. 30.	Cash	199...	7 50	Mar. 30.	Cash	198...	400 00
Aug. 10.	"	214...	400 00	Dec. 31.	Mill ac	228...	7 50
			407 50				407 50

Exhibit A—Continued.

Apr.	29.	Cash	241...	2 75			
June	16.	Cash	247...	302 75			
Aug.	30.	"	254...	87 50			
				393 00			393 00
1880.					1880.		
Jan.	31.	Balance ac	270...	1,000 00	Jan.	12. Cash	268... 1,000 00
Apr.	30.	A. Ballard	275...	1,000 00	Feb'y	1. Balance ac	272... 1,000 00
June	11.	Cash	281...	2,019 21	"	14. Cash	273... 1,000 00
Aug.	28.	"	288...	2,000 00	May	22. Wilson & Hen	278... 699 21
Sept.	30.	"	292...	1,000 00	"	" Marinette, J. W.	" ... 520 00
					June	30. Insurance	283... 800 00
					"	14. E. P. F.	282... 2,000 00
				6,019 21			6,019 21
July	30.	Cash	318...	1,000 00	May	20. Cash	311... 2,000 00
Sept.	30.	"	327...	1,000 00			
				2,000 00			2,000 00
1883.					1882.		
Jan.	31.	Balance ac	377...	5,500 00	Dec.	30. Cash	373... 2,500 00
					1883.		
					Jan.	20. "	" ... 3,000 00
				5,500 00			5,500 00
Aug.	4.	E. P. F.	392...	5,500 00	Feb'y	1. Balance ac	378... 5,500 00
Aug.	20.	To transfer E. P. Ferry Lumber Co. boats.		663 76	June	16. Wilson & Hender	387... 663 76
				663 76			663 76

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Exhibit B.

Bills Receivable.

1874.					1875.		
Dec.	20.	Sund's	85...	305 00	Jan.	31. Balance ac	90... 365 33
"	31.	Petty ledg	86...	60 33			
				365 33			365 33
1875.							
Feb'y	1.	Balance ac	91...	365 33	May	10. Cash	95... 305 00
					Aug.	2. Petty ledger	108... 60 33
				365 33			365 33
1877.							
Aug.	10.	Temple & Co	174...	716 35	Sept.	29. S. H. L. & Co	181... 716 35
Sept.	29.	S. H. L. & Co	181...	454 98	Nov.	30. Cash	185... 200 00
"	"	D. C. Bowen	" ...	200 00	Dec.	10. S. H. L. & Co	189... 454 98
				654 98			654 98
1878.							
April	20.	P. ledger	199...	72 84	Aug.	31. Cash	214... 206 21
June	4.	Temple & Co.	207...	201 04	Sept.	10. "	217... 37 00
Sept.	10.	Personal propt.	217...	90 00	Nov.	30. Stable ac	226... 13 70
1879.					1879.		
Jan.	31.	Petty ledger	232...	140 10	Jan.	31. Balance ac	236... 598 71
"	"	Temple & Co	235...	346 47			
"	"	Profit & loss	236...	5 17			
				855 62			855 62
Feb'y	1.	Balance ac	238...	598 71	1879.		
Mar.	31.	D. C. Bowen	239...	147 07	Mar.	31. Cash	239... 20 00
Dec.	17.	Petty ledger	265...	30 57	Apr.	29. "	241... 25 00
1880.					May	10. Personal prpt	242... 225 00
Jan.	12.	"	268...	271 00	"	30. Cash	245... 138 45
"	31.	Profit & loss	271...	17 50	June	30. Personal prpt	247... 87 50
					July	10. Sund's	249... 59 00
					1880.		
					Jan.	12. Petty ledg	268... 148 94
					"	31. Cash	269... 270 82
					"	" Balance ac	270... 90 14
				1,064 85			1,064 85

Exhibit B— Continued.

Feb'y	1.	Balance ac	272...	90 14	Sept.	30.	Petty ledger	292...	33 37
Oct.	7.	R. J. B.	293...	275 00	Oct.	7.	Cash	293...	275 00
1881.					1881.				
Jan.	31.	Petty ledger	301...	164 00	Jan.	31.	Balance ac	304...	223 89
"	"	Profit & loss	304...	2 80					
				531 94					531 94
1881.									
Feb'y	1.	Balance ac	306...	223 57	Apr.	30.	Cash	309...	168 23
Dec.	20.	P. P.	337...	17 19	1882.				
220					Jan.	31.	"	338...	250 00
1881.					1882.				
Dec.	20.	P. P.	337...	330 42	Jan.	31.	Balance ac	340...	407 16
Jan.	21.	"	338...	250 00					
"	31.	Bal. ac	340...	4 21					
				825 39					825 39
1882.					1882.				
Feb'y	1.	Balance ac	342...	407 16	Mar.	23.	Cash	344...	17 19
Mar.	18.	Cash	343...	3 00	July	31.	"	354...	12 00
Nov.	30.	Petty ledger	368...	360 00	Aug.	31.	"	356...	334 82
					1883.				
Dec.	20.	P. P.	371...	225 00	Jan.	31.	Bal. ac	376...	644 57
1883.									
Jan.	31.	"	376...	13 42					
				1,008 58					1,008 58
Feb'y	1.	Balance ac	378...	644 57	May	19.	Cash	381...	504 29
May	19.	Cash	379...	14 67	"	"	"	385...	100 00

221 The account was opened July 5th, 1877, and closed January 31st, 1883, and the following is a summary thereof:

EXHIBIT "C."

Date.	No. of checks.	Aggregate amount of checks.	Largest.	Smallest.	No. of credits.	Aggregate of credits.
July, 1877	5	$297 58	$91 99	$41 40	1	$371 44
Aug., "	5	505 25	200 00	7 00	1	495 36
Sept., "	7	1,161 75	900 00	24 25	1	1,184 48
Oct., "	6	1,515 50	700 00	33 18	2	1,600 00
Nov., "	9	1,464 61	1,200 00	7 56	2	2,034 51
Dec., "	11	1,484 85	1,002 62	10 00	2	763 75
Mar., 1878	3	337 00	300 00	7 00	1	400 00
Apr'l, "	5	125 74	194 51	50	1	203 82
May, "	6	153 18	63 30	1 89		
June, "	14	1,902 39	1,416 93	5 00	3	1,982 42
July, "	11	1,615 89	900 00	1 00	5	3,234 56
Aug., "	14	2,301 83	1,300 00	50	5	1,091 21
Sept., "	9	941 79	500 00	6 00	3	2,050 00
Oct., "	9	1,603 99	1,100 00	12 05	2	140 00
Nov., "	9	2,317 30	1,303 00	15 00	3	2,550 90

Exhibit "C"—Continued.

Date.	No. of checks.	Aggregate amount of checks.	Largest.	Smallest.	No. of credits.	Aggregate of credits.
Dec., 1878	12	$2,451 07	$1,550 00	$5 00	2	$3,052 39
Jan'y, 1879	3	522 52	254 94	84 25	2	380 30
Feb'y, "	5	752 36	513 66	16 00	1	500 00
M'ch, "	6	506 51	400 00	8 85		
April, "	7	279 08	131 25	3 00	1	300 00
May, "	10	1,491 98	1,100 00	3 25	3	1,439 69
June, "	12	3,467 40	1,500 00	12 00	4	3,632 55
222						
July, "	14	1,625 54	850 00	4 21	2	2,133 62
Aug., "	14	1,519 83	1,000 00	9 00	4	2,134 52
Sept., "	14	1,916 84	1,050 00	7 75	2	1,746 38
Oct., "	10	1,583 07	1,300 00	5 00	3	1,175 73
Nov., "	14	1,438 24	500 00	9 12	2	1,157 16
Dec., "	13	1,114 73	400 00	10 00	3	1,052 00
Jan., 1880	15	528 82	113 75	4 75	2	570 82
Feb., "	10	1,650 46	1,001 00	9 38	2	1,600 00
M'ch, "	17	374 46	83 33	25	1	200 00
April, "	14	320 79	116 49	75	2	329 60
May, "	18	3,202 95	1,200 00	5 00	6	3,672 21
June, "	14	5,969 78	1,956 67	8 00	5	5,455 35
July, "	13	2,773 59	1,500 00	6 60	4	3,283 37
Aug., "	20	4,821 14	1,500 00	1 00	6	4,291 38
Sept., "	21	4,319 57	1,605 42	25	4	3,762 18
Oct., "	11	1,928 85	1,513 50	7 92	2	2,077 14
Nov., "	12	2,412 74	1,600 00	15 00	4	3,054 66
Dec., "	17	1,395 46	402 18	20 00	2	824 84
Jan'y, 1881	12	561 99	243 25	5 00	3	826 50
Feb'y, "	5	434 95	232 81	31 29	2	289 50
M'ch, "	8	354 27	114 03	5 00	2	202 97
April, "	10	454 57	184 07	2 24	2	368 23
May, "	17	4,125 91	2,500 00	50	5	4,171 52
June, "	12	3,307 37	1,600 00	1 25	4	3,276 04
July, "	16	6,426 53	2,000 00	9 29	6	6,266 29
Aug., "	11	2,312 15	1,716 39	3 90	5	3,614 95
Sept., "	10	3,525 30	1,850 00	10 00	4	3,908 39
Oct., "	16	2,611 44	1,775 00	7 20	4	2,427 49
223						
Nov., "	11	2,893 92	1,928 40	60	4	4,125 98
Dec., "	11	4,907 73	2,597 25	6 75	6	3,130 62

Exhibit "C"—Continued.

Date.	No. of checks.	Aggregate amount of checks.	Largest.	Smallest.	No. of credits.	Aggregate of credits.
Jan'y, 1882	2	$824 44	$800 00	$24 44		
Feb'y "	13	747 62	166 66	3 50	3	$1,315 00
M'ch, "	11	968 39	225 00	10 00	2	367 50
April, "	16	975 15	330 00	10 00	6	1,295 00
May, "	11	2,126 08	1,575 00	5 00	2	2,654 73
June, "	18	4,319 28	2,431 67	1 80	6	4,092 98
July, "	14	2,832 13	2,200 00	17 00	3	3,442 44
Aug., "	10	4,663 14	2,150 00	1 50	8	3,522 16
Sept., "	7	4,852 29	2,513 65	17 15	3	5,403 25
Oct., "	16	3,140 44	2,300 00	8 68	9	4,575 39
Nov., "	12	4,319 13	1,800 00	50	3	3,549 29
Dec., 1882	10	1,603 93	653 29	15 50	2	725 00
Jan'y, 1883	4	950 50	500 00	50	3	1,125 00

EXHIBIT D.

224

MONTAGUE, MICH., *October 15th*, 1873.

43 | 47	Petty ledger to bills payable			255
	For note to Fisher, 90 days	225		
	" " " George Tatro, 90 days	30		
			255	
43 | 47	Petty ledger to bills payable			10
	For W. H. Noll, note 90 days	10		
43 | 47	Petty ledger to bills payable			85
	For note, 90 days from date, for Wm. Ake	85		
47	Issued and unpaid bills payable			340
118 | 47	Cash to bills payable			400
	For 60 days, note for I. M. Weston, cashier Lumberman's State bank, Whitehall	400		
139 | 47	Mill ac. to bills payable			7 50
	To bal. transferred	7 50		
47	Cash, bills payable			300
47	" "			
	By our note given D. C. Bowen			87 50
159 | 47	Mill ac. to bills payable			5 50
	To bal. transferred	5 50		
154 | 47	Cash to bills payable			1,000
	For our note given for A. Ballard & dis. at Merch. Nat. bank, Chicago, for	1,000		
	Bills payable.			
	Note issued & unpaid	1,000		
	Bills payable.			
	By our note given & dis. for A. Ballard, Jan. 14th			1,000

225

124 | 47	Wilson & Hendrie to bills payable			699 21
	For our note, 30 days	699 21		

147 | 47	Marinette Iron Works to bills payable			520	
	To accepted their draft 90 days		520		
163 | 47	Insurance to bills payable			800	
	To our note given for H. D. Johnson for insurance Apr. 3d		800		
168 | 47	E. P. Ferry to bills payable			2,000	
	For our note discounted for him, Whitehall bank's draft on Chicago		1,956 67		
	Discount on our note		43 33		
			2,000 00		
156 | 47	Cash to bills payable			2,000	
	To our note discounted to pay E. P. Ferry draft	2,000			
47	Bills payable.				
	By our note dis. at Lumberman's Nat. Nov. 29th			2,500	
203 | 47	Cash to bills payable			3,000	
	For our note given B. F. Weston, 90 days	3,000			
47	Bills payable.				
	Am't outstanding notes			5,500	✓
47 | 189	Wilson & Hendrie, to bills payable			663 76	
	For our note given May 22d, 90 days, 8% int.	663 76			
226					
47 | 28	Bills payable to cash			10	
	To W. H. Noll's note p'd	10			
47 | 54	Bills payable to balance ac.			340	✓
	Issued and unpaid	340	✓		
47	Issued and unpaid bills payable			340	✓
47	Bills payable, George Tatro note	30			
47	" " Am't paid endorsed on Wm. Ake's note	40			
47	" " to cash	45			
47	" " Fisher note	225			
47 | 110	" " to cash			7 50	
	for int. on I. M. Weston note	7 50			
47	" " to cash	400			
47	" " to cash	2 75			
47	" " to p'd our note for 300 & int.	302 75			
47 | 153	" " to cash			87 50	
	" p'd our note for D. C. Bowen	87 50			
47	" " issued & unpaid	1,000	✓		
47 | 164	Bill spayable, N. Ballard.				
	N. Ballard to bills payable			1,000	
	To paid our note, 90 days, Jan. 14th	1,000			
47	Bills payable.				
	To Marinette Iron Works acceptance	520			
	" note for H. D. Johnson for insurance	800			
	" " " Wilson & Hendrie	699 21			
		2,019 21			
227					
47	Bills payable to cash	2,000			
47	" " to cash	1,000			
47	" " to cash paid on our 2,000 note	1,000			
47	" " to p'd our note at bank for	1,000			
47	" " bal. transferred	5,500	✓		
47 | 168	" " to E. P. Ferry			5,500	
	To p'd our note for B. F. Weston	5,500			

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Exhibit E.

Bills Receivable, 1874.

12	Bills receivable to sunds	305	
21	Ferry & Bro.		
	For one large bay horse to J. A. & C. E. Covill, due May 1st, '75		80
	For one large bay horse to Staple & Covill, due May 1st, '75		125

6		Personal propt.		
	For one bay horse known as "Chicago horse," to Staple & Covill, due May 1st, '75			100
72 | 60	Bills receivable to petty ledger			60 33
	For J. Hulbert, note to bal. his ac. due Sept. 21, '75	60 33		
72	Bills receivable.			
	Value as per inv't'y			365 33
72 | 110	Bills receivable to Temple & Co.			716 35
	For 90 days note to bal.	716 35		
72 | 107	Bills receivable to S. H. Lasley & Co.			454 98
	For note to bal. ac.	454 98		
72	Bills receivable, D. C. Bowen	200		
72 | 132	Bills receivable to petty ledger			72 84
	For A. Z. Mason note for	72 84		
72	Bills receivable, Temple & Co.			
	Note due Aug. 11th	201 04		
72 | 6	Bills receivable to personal propt.			90
	For am't rec'd for old John	90		
72 | 135	Bills receivable to petty ledger			140 10
	For Neefer & Carlton, note 4 mo. to bal.	140 10		
	Bills receivable to Temple & Co.			346 47
229				
	For Montague Shade Roller M'f'g Co., note to bal.	346 47		
72	Bills receivable.			
	Bal. transferred	5 17		
"	Bills receivable.			
	Value as p'r inventory	598 71		
"	Bills receivable, D. C. Bowen, his note due June 1st for	147 07		
72 | 167	Bills receivable to petty ledger			30 57
	For E. Hulbert's note for	30 57		
72 | 167	Bills receivable to petty ledger			271
	To Neefer & Carlton note	271		
72	Bills receivable.			
	Bal. transferred	.17 50		
	Bills receivable.			
	Value as p'r inv't.	90 14		
72	Bills receivable, R. J. Blackman			275
	To Linderman's note, 60 days	275		
72 | 173	Bills receivable to petty ledger			164
	To Neefer & Carlton's note	164		
72	Bills receivable to profit & loss	2 80		
72	Bills receivable.			
	Value as p'r inventory	223 57		
230				
72 | 152	Bills receivable to personal propt.			17 19
	For Ed. Whelan note, bal. on horse sold	17 19		
72 | 175	Bills receivable to petty ledger			330 42
	For F. Dolman note	37 98		
	F. Bell "	12 74		
	Neefer & Carlton note	279 70		
			330 42	
72 | 152	Bills receivable to personal propt.			250
	For two horses & harnesses to Burrows & B.	250		
72	Bills receivable.			
	Bal. transferred	4 21		
198	Bills receivable, value as p'r inv't.	407 16		
198	Bills receivable.			
	For dis. on Burnes & B. note	3 00		
198	Bills receivable to petty ledger	360 00		
198 | 152	" " " personal propt.			225 00
	For one pr. of horses sold Blight & Hinchman	225 00		
198	Bills receivable to bal. transferred (int.)	13 42		
198	" " value as p'r inv't.	644 57		
198	" "			

		To disc. on Neefer & Carlton note	8 71		
		" " " Hinchman & Blight	1 31		
		" error Hinchman & B. note (int.)	4 65		
				14 67	
231					
	72	Balance ac. to bills receivable.			
		Value as pr. inv't'y			365 33
	72	Cash to bills receivable.			
		For Staple & Covill's note	225 00		
		A. J. & C. Covill	80 00		
					305 00
61	72	Petty ledger to bills receivable			60 33
		For J. Hulbert's note taken up		60 33	
	72	H. S. Lasley & Co. to bills receivable.			
		To Temple & Co. note			716 35
	72	Cash to bills receivable			200
	72	H. S. Lasley & Co. to bills receivable.			
		For their note for			454 98
	72	Cash to bills receivable.			
		For am't Temple & Co. note & int.			206 21
144	72	Cash to bills receivable			37
		For am't paid & endorsed on note		37	
148	72	Stable ac. to bills receivable			13 70
		For 2,740 lb. c. hay endorsed on Huston's note		13 70	
	72	Balance ac. to bills receivable.			
		Value as p'r inventory			598 71
145	72	Cash to bills receivable			20
		To am't endorsed on C. Huston's note		20	
232					
	72	Cash to bills receivable			25 00
152	72	Personal propt. to bills receivable			225 00
		For one pr. mules, endorsed on M. S. R. Co.		225 00	
	72	Cash to bills receivable			138 45
	72	Personal propt. to bills receivable.			
		By am't endorsed on D. C. Bowen note			87 50
	72	Sunds. to bills receivable for am't endorsed on A. Z. Mason note			59 00
	166	Petty ledger		50 00	
	95	Repairs		9 00	
167	72	Petty ledger to bills receivable			148 94
		To Neefer & Carlton note for 148.94, taken up & added to their ac. & new note given		148 94	
154	72	Cash to bills receivable			270 82
		To Neefer & Carlton note dis.		270 82	
	72	Balance ac. to bills receivable.			
		Value as per inv't			90 14
173	72	Petty ledger to bills receivable			33 37
		E. Hulbert's note transferred to his ac.		33 37	
155	72	Cash to bills receivable			275 00
		To Linderman's note discounted		275 00	
	72	Balance ac. to bills receivable.			
		Value as p'r inv't			223 57
233					
	72	Cash to bills receivable.			
		By Neefer & Carlton note dis.			168 23
157	72	Cash to bills receivable			250 00
		To Bower's & B. note		250	
	72	Balance ac., bills receivable.			
		Value as p'r inv't			407 16
	198	Cash to bills receivable.			
		By Ed. Whelan note p'd			17 19
	198	Cash to bills receivable.			
		By am't p'd on Bell note			12 00
	198	Cash to bills receivable.			
		By am't p'd on F. Dolman's note & int.	25 26		
		" " " " " " "	14 74		
		" " " " Neefer & Carlton note & int.	294 82		
					334 82

198	Balance ac., bills receivable.			
	Value as p'r inv't			644 57
198	Cash to bills receivable.			
	By Neefer & Carlton's note dis.		274 64	
	Hinchman & Blight " "		229 65	
				504 29
198	Cash to bills receivable			100 00
	Error in entry of Neefer & Carlton's note dis.	100 00		

[Endorsed:] 1853, 1828, & 1839. The circuit court of the United States for the sixth circuit & western district of Michigan, southern division. National Exchange Bank of Boston, pl'ff, *vs.* Frank H. White *et al.*, def'ts. Bill of exceptions. Filed Sep. 25, 1888. C. L. Fitch, clerk. M. Brown, att'y for def't Dowling. J. C. Fitz Gerald, of counsel.

234 March Term, A. D. 1888.

TUESDAY, *September* 25, 1888.

The court met pursuant to adjournment.
Present: The Honorable Henry F. Severens, district judge.

THE NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, Edward P. Ferry, and Thomas W. Ferry.
} Nos. 1853, 1828, and 1839 Consolidated.

The bill of exceptions in this cause having been duly settled, signed, and filed, and the defendant George E. Dowling suggesting his intention to remove this cause by writ of error to the Supreme Court of the United States, on his application it is ordered by the court that the stay of proceedings heretofore granted in this cause be, and the same hereby is, continued in full force for twenty days after the expiration of the time previously limited therefor.

235 October Term, A. D. 1888.

THURSDAY, *October* 4, 1888.

The court met pursuant to adjournment.
Present: The Honorable Henry F. Severens, district judge.

NATIONAL EXCHANGE BANK OF BOSTON
vs.
FRANK H. WHITE, GEORGE E. DOWLING, Thomas W. Ferry, and Edward P. Ferry.
} Nos. 1853, 1828, and 1839 Consolidated.

In this cause, on application of J. C. Fitz Gerald, Esq., of counsel for the said defendant George E. Dowling, it is ordered that the stay of proceedings heretofore granted in this cause be, and the same hereby is, continued in full force for the period of ten days after the expiration of the time previously limited therefor.

236 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

THE NATIONAL EXCHANGE BANK OF BOSTON, Pl'ff,
vs.
GEORGE E. DOWLING, FRANK H. WHITE, Edward P. Ferry, and Thomas W. Ferry, Def'ts.

Cases No. 1853 Consolidated with Nos. 1828 & 1839.

To Messrs. Thomas W. Ferry, Edward P. Ferry, and Frank H. White.

GENTLEMEN: You will please take notice that the defendant George E. Dowling, above named, is about to sue out a writ of error to the Supreme Court in the above-entitled cause. He hereby requests you to appear and join with him in suing out and prosecuting said writ of error in said Supreme Court.

Yours, &c.,

M. BROWN,
Att'y for Def't Dowling.
J. C. FITZ GERALD,
Of Counsel.

Dated September 27th, 1888.

To M. Brown, att'y for defendant Dowling, and J. C. Fitz Gerald, of counsel.

GENTLEMEN: We and each of us, the undersigned, defendants in said cause, do respectfully decline to appear and join with said George E. Dowling in suing out and prosecuting said writ of error above named in said Supreme Court.

EDW'D P. FERRY.
FRANK H. WHITE.
THOMAS W. FERRY.

[Endorsed:] Nos. 1853, 1828, & 1839. The circuit court of the United States for the 6th circuit and western district of Michigan, southern division. George E. Dowling, etc., *ads.* National Exchange Bank of Boston. Refusal of def'ts to join in writ of error. Filed Oct. 24, 1888. C. L. Fitch, clerk. M. Brown, att'y for def't Dowling. J. C. Fitz Gerald, of counsel.

237 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Southern Division of the Western District of Michigan, *ss:*

To the honorable justices of the Supreme Court of the United States:

And now comes George E. Dowling, of Montague, in said district, by M. Brown, his attorney, and complains that in the records and proceedings, and also in the rendition of judgment, in a suit between The National Exchange Bank of Boston, plaintiff, and said George E. Dowling and Frank H. White, Edward P. Ferry, and Thomas

W. Ferry, defendants, tried in the circuit court of the United States for said southern division of the western district of Michigan, at the October term thereof, A. D. 1886, and in which judgment was rendered against him and the other defendants on the 23rd day of December, A. D. 1886, manifest error hath intervened, to the great damage of the said George E. Dowling, who having requested his codefendants in said cause to join with him in prosecuting a writ of error to the Supreme Court and they having refused so to do, which said refusal, in writing, has been duly filed in said cause:

Wherefore he prays for the allowance of a writ of error and such other process as may cause the same to be corrected by the Supreme Court aforesaid.

Dated October 25th, A. D. 1888.

M. BROWN, *Attorney.*

Allowed October 25, A. D. 1888.

[Endorsed:] Nos. 1853, 1828, & 1839. The circuit court of the United States for the 6th circuit and southern division of the western district of Michigan. George E. Dowling *et al. ads.* National Exchange Bank of Boston. Petition for writ of error. Filed Oct. 25, 1888. C. L. Fitch, clerk. M. Brown, att'y for def't Dowling. J. C. Fitz Gerald, of counsel.

238 Supreme Court of the United States.

THE NATIONAL EXCHANGE BANK OF BOSTON, Plaintiff,
vs.
GEORGE E. DOWLING, Impleaded with FRANK H. WHITE, EDWARD P. FERRY, and THOMAS W. FERRY, Defendants.

Know all men by these presents that we, George E. Dowling, the above-named defendant, of Montague, in the western district and southern division of Michigan, as principal, and Charles H. Cook and Hiram E. Staples, as sureties, are held and firmly bound unto The National Exchange Bank of Boston, the above-named plaintiff, in the sum of twenty-five thousand dollars, lawful money of the United States, to be paid to the said The National Exchange Bank of Boston aforesaid, its successors and assigns; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this 24th day of October, A. D. 1888.

Whereas the above-named George E. Dowling hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment lately rendered by the circuit court of the United States for the sixth circuit and southern division of the western district of Michigan in a certain cause wherein the above-bounden George E. Dowling and Frank H. White, Edward P. Ferry, and Thomas W. Ferry were defendants and the said National Exchange Bank of Boston was plaintiff:

Now, therefore, the condition of this obligation is such that if the above-named defendant, George E. Dowling, shall prosecute
239 his said writ of error to effect and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

GEORGE E. DOWLING. [L. S.]
CHAS. H. COOK. [L. S.]
HIRAM E. STAPLES. [L. S.]

UNITED STATES OF AMERICA, } ss:
Western District of Michigan, }

Charles H. Cook, of Montague, of said district, being duly sworn, deposes and says that he is worth the sum of thirty thousand dollars over and above all his just debts and liabilities.

CHAS. H. COOK.

Sworn and subscribed to before me this 24th day of October, A. D. 1888.

JAMES SNOW,
United States Commissioner.

UNITED STATES OF AMERICA, } ss:
Western District of Michigan, }

Hiram E. Staples, of Whitehall, of said district, being duly sworn, deposes and says that he is worth the sum of thirty thousand dollars over and above all his just debts and liabilities.

HIRAM E. STAPLES.

Sworn and subscribed to before me this 24th day of October, A. D. 1888.

JAMES SNOW,
United States Commissioner.

I approve the above bond and the sufficiency of the sureties thereto.

October 25th, 1888.

H. F. SEVERENS, *Dist. Judge.*

[Endorsed:] Nos. 1853, 1828, & 1839. Supreme Court of the United States. George E. Dowling, impleaded, &c., *ads.* The National Exchange Bank of Boston. Supersedeas bond. Filed Oct. 25, 1888. C. L. Fitch, clerk.

240 UNITED STATES OF AMERICA, ss:

The President of the United States to the honorable the judges of the circuit court of the United States for the sixth circuit and southern division of the western district of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between The National Exchange Bank of Boston, plaintiff, and George E. Dowling, impleaded with Frank H. White, Edward P.

Ferry, and Thomas W. Ferry, *is* defendant, a manifest error hath happened, to the great damage of the said defendant, George E. Dowling, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, and the seal of said circuit court, at Grand Rapids, the 25th day of October, in the year of our Lord one thousand eight hundred and eighty-eight.

Seal of the U. S. Circuit Court, Southern Division, Western District of Mich.

CHARLES L. FITCH,
Clerk of the Circuit Court for the Western District of Michigan.

Allowed by—
H. F. SEVERENS,
U. S. Dist. Judge.

This 25th day of October, A. D. 1888.

[Endorsed:] Supreme Court of the United States. George E. Dowling, impleaded with Frank H. White *et al.*, plaintiff in error, *vs.* The National Exchange Bank of Boston, defendant in error. Writ of error. Received Oct. 26, 1888. C. L. Fitch, clerk. M. Brown, attorney for plaintiff in error.

241 UNITED STATES OF AMERICA, } *ss:*
Western District of Michigan, }

Francis A. Start, of Grand Rapids, in said district, being duly sworn, says that on the 26th day of October, A. D. 1888, he served the citation hereto annexed upon Norris & Norris, attorneys for the National Exchange Bank of Boston, therein named, by delivering to Lyman D. Norris, one of said attorneys, a true copy thereof, and at the same time exhibiting to him the original citation signed by the Hon. H. F. Severens, U. S. dist. judge.

FRANCIS A. START.

Subscribed and sworn to before me this 26th day of October, 1888.
JOHN McQUEWAN,
U. S. Commissioner, West. Dist. of Mich.

242 UNITED STATES OF AMERICA, *ss*:

To the National Exchange Bank of Boston, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the sixth circuit and southern division of the western district of Michigan, wherein George E. Dowling, impleaded with Frank H. White, Edward P. Ferry, and Thomas W. Ferry, is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 25th day of October, A. D. 1888.

H. F. SEVERENS,
U. S. Dist. Judge.

[Endorsed:] In the Supreme Court of the United States. George E. Dowling, impleaded, &c., pl'ff in error, *vs.* National Exchange Bank of Boston, d'f't in error. Citation. Filed Oct. 26, 1888. C. L. Fitch, clerk. M. Brown, att'y for pl'ff in error. J. C. Fitz Gerald, of counsel.

243 UNITED STATES OF AMERICA:

In the Supreme Court of the United States.

GEORGE E. DOWLING, Impleaded with FRANK H. WHITE, EDWARD P. FERRY, and THOMAS W. FERRY, Plaintiff in Error,
vs.
THE NATIONAL EXCHANGE BANK OF BOSTON, Defendant in Error.

And now, on this 26th day of October, A. D. 1888, comes the said George E. Dowling, plaintiff in error, by M. Brown, his attorney, and says that in the record and proceedings aforesaid in the circuit court of the United States for the sixth circuit and western district of Michigan, southern division, and in the giving of the judgment aforesaid there is manifest error—that is to say:

1st. There is error in this, to wit, that by the record aforesaid it appears that on the trial of the issue in the said cause in the said circuit court the counsel for the said The National Exchange Bank of Boston offered in evidence three certain promissory notes, all purporting to be made by "F. H. White & Co." and bearing date, respectively, "Oct. 17th, 1882," "Nov. 27th, 1882," and "Jan. 15th, 1883," which offer was objected to by the counsel for the said George E. Dowling, the plaintiff in error, because the execution of the said notes had not been properly proven, and because from the evidence then already adduced it appeared that the said notes were made without the knowledge or consent of the

said George E. Dowling, and because the firm of F. H.
244 White & Co. was a non-trading firm, and because it appeared that the notes had been filled up without any authority from any one authorized to do so; because it did not appear that the firm of F. H. White & Co. were engaged in any business that authorized the partners thereof to issue notes, and it appeared affirmatively that the partnership was a non-trading partnership, and that the said circuit court overruled the said objections and admitted the said notes in evidence.

2. There is also error in this, to wit, that by the record aforesaid it appears that on the said trial of the said issue the counsel for the said National Exchange Bank of Boston on cross-examination of the witness George E. Dowling propounded to him, the said witness, the question following, to wit: "Did the firm have an account—a bank account or current account—with any merchant in Montague or Whitehall; draw orders on them or others for the payment of their labor?" which question was objected to by the counsel for the said George E. Dowling as being irrelevant, and that the said circuit court overruled the said objection and allowed said question to be put to and answered by the said witness.

3rd. There is also error in this, to wit, that by the record aforesaid it appears that on the said trial of the said issue the counsel for the National Exchange Bank of Boston aforesaid offered in evidence letter-heads in the words and figures following, to wit: "F. H. White & Co., manufacturers of lumber, Montague, Mich.," and that the admission thereof was objected to by the counsel for the said George E. Dowling as being irrelevant unless brought home to the knowledge of the plaintiff, The National Exchange Bank of Boston aforesaid, and that it was not brought home to such knowledge, and that the said circuit court overruled the said objection and admitted the said letter-head in evidence.

245 4th. There is also error in this, that by the record aforesaid it appears that on the said trial of the said issue the said circuit court charged and instructed the jury impannelled and sworn to try the issue therein to render a verdict in favor of the plaintiff (The National Exchange Bank of Boston aforesaid) and against the defendants (the said George E. Dowling, Frank H. White, Edward P. Ferry, and Thomas W. Ferry).

Wherefore, and for divers other manifest errors appearing in the said record and proceedings, the said plaintiff in error, by M. Brown, his attorney, prays that the judgment rendered in said cause by the said circuit court may be reversed.

M. BROWN,
Attorney for Plaintiff in Error.

[Endorsed:] In the Supreme Court of the United States. George E. Dowling, impleaded with Frank H. White, Edward P. Ferry, and Thomas W. Ferry, plaintiff in error, *vs.* The National Exchange Bank of Boston, defendant in error. Assignments of error and prayer for reversal. Filed Oct. 26, 1888. C. L. Fitch, clerk. M. Brown, att'y for pl't'ff in error.

246 THE UNITED STATES OF AMERICA, } ss:
Western District of Michigan, Southern Division, }

I, Charles L. Fitch, clerk of the circuit court of the United States for the western district of Michigan, do hereby certify that the foregoing is a true and compared copy of the files and records and the whole thereof in the proceedings of said court in said entitled cause.

Witness my official signature and the seal of said court, at Grand Rapids, this 8th day of March, in the year of our Lord one thousand eight hundred and eighty-nine.

Seal of the Circuit Court of the United States for the Western District of Michigan, Southern Division.

CHARLES L. FITCH, *Clerk.*

Endorsed on cover: Case No. 13,532. W. Michigan C. C. U. S. No. 349. George E. Dowling, plaintiff in error, *vs.* The National Exchange Bank of Boston. Filed April 8, 1889.

Office Supreme Court U. S.
FILED
APR 16 1892
JAMES H. McKENNEY,
CLERK.

UNITED STATES OF AMERICA.

THE SUPREME COURT.

GEORGE E. DOWLING, PLAINTIFF IN ERROR.

vs.

THE NATIONAL EXCHANGE BANK OF BOSTON.

OCTOBER TERM, 1891.

Term No. 349.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

BRIEF FOR PLAINTIFF IN ERROR.

M. BROWN, and
J. C. FITZ GERALD,
Attorneys for Plaintiff in Error.

No. 13,532.

UNITED STATES OF AMERICA.

THE SUPREME COURT.

GEORGE E. DOWLING, PLAINTIFF IN ERROR.

vs.

THE NATIONAL EXCHANGE BANK OF BOSTON.

STATEMENT OF CASE.

This action is assumpsit brought by the defendant in error against Thomas W. Ferry and Edward P. Ferry, composing the firm of Ferry & Bro., Frank H. White, Edward P. Ferry and the plaintiff in error, composing the firm of F. H. White & Co. (Edward P. Ferry being a member of both said firms), upon three promissory notes, one for $5,228.75, dated at Montague, Mich., Oct. 17th, 1882, payable four months after date to the order of Ferry & Bro., at the National Exchange Bank, Boston, Mass., signed by F. H. White & Co., and endorsed by Ferry & Bro.; one for $5,100.73, dated at Montague, Mich., Nov. 17th, 1882, payable four months after date to the same payee, at the same place, and made and endorsed by the same parties; and one for $5,391.90, dated Montague, Mich., Jan. 15th, 1883, payable four months after date to the same payee, at the same place, and made and endorsed by the same parties.

The plaintiff in error, one of the defendants in the court below, pleaded the general issue, and denied the execution of the notes, under oath, by filing a proper affidavit for that purpose, under rule 28 of the trial court.

The name of F. H. White & Co. was signed to these notes by Edward P. Ferry, in the Territory of Utah, the notes were then sent in blank to Thomas W. Ferry. He endorsed the name of Ferry & Bro. on the back of the notes, and put them in the hands of Andrew Thompson,

the book-keeper of Ferry & Bro., at Grand Haven, Mich., who, by instructions from said Thomas W. Ferry, caused the notes to be filled out in differing amounts, by his wife, and sent them to the defendant in error to be discounted for the benefit of Ferry & Bro.

The plaintiff in error had no knowledge of the making and issuing said notes or either of them and never consented thereto. The notes in suit were not nor was either of them given in the business of the firm of F. H. White & Co., in any way, nor for the benefit of said firm, nor did said firm of F. H. White & Co. ever receive any benefit whatever from said notes or either of them.

There is no evidence in the case tending to show that the plaintiff in error ever ratified the making or negotiating of this paper either expressly or by implication; or that it was usual, convenient or necessary for this firm or similar firms to make such or similar paper, or that it had ever made such paper with the knowledge or consent of the plaintiff in error or his partner, Frank H. White.

The evidence did show that Frank H. White nor the plaintiff in error never knew or had any knowledge that the defendant in error had discounted any note of F. H. White & Co. other than the notes in suit until they heard the depositions printed in the record read, and had no knowledge of the notes in suit being given or discounted until after their maturity. That the notes referred to in said depositions were not nor was either of them given in the business of the firm of F. H. White & Co. That said firm of F. H. White & Co. never received any benefit for any of said notes, and that they were made and issued without the knowledge or consent of said Frank H. White, or the plaintiff in error, and none of said notes were issued by said firm, and they or either of them never consented to the firm name of F. H. White & Co. being signed to any of said notes.

On the first day of February, A. D. 1873, the plaintiff in error and Edward P. Ferry, of Grand Haven, Michigan, and Frank H. White, of Montague, Michigan, made and entered into the following agreement, to-wit:

"Articles of co-partnership entered into this first day of

February, A. D. 1873, by and between Edward P. Ferry, of Grand Haven, Michigan, and George E. Dowling and Frank H. White, of Montague, Michigan, for the purpose of carrying on the business of sawing lumber, pickets and lath at the said village of Montague, in the steam saw mill lately there erected, witnesseth:

"FIRST. The name and style of the firm shall be F. H. White & Co., and said firm shall continue during the full term of five years, unless sooner dissolved by mutual consent and agreement; and should the death of either one of the partners occur during the life of this agreement, the surviving partners may, at their own opinion, dissolve the partnership or continue the business during the full term of the time named in this agreement.

"SECOND. The present fixed capital of the firm is hereby determined to be $35,551.65, of which Edward P. Ferry contributes $16,804.38, George E. Dowling contributes $8,402.19, and Frank H. White contributes $8,402.19; and no part or amount of said capital shall be diverted or used otherwise than in the business by either of the partners during the life of this agreement, the profits or losses to be shared according to the respective interests, to-wit: Edward P. Ferry one-half, and George E. Dowling and Frank H. White each one-quarter.

"THIRD. Edward P. Ferry and George E. Dowling shall have the care and charge of securing the sawing for the mill so far as they may be able to make any contracts therefor at current rates, and the supervision of the financial part of the business and the supervision of the books of said firm to be divided between them as they may mutually agree, no charge to be made for their services. Frank H. White is to have full charge of the management of the mill in the details of the work of sawing, hiring and discharging men and fixing their wages at current rates, according to their respective skill and capacity; to have charge and keep a set of double-entry books, which shall be open at any time for the inspection of either of the partners, and shall receive for his services the rate of one thousand dollars per annum, to be paid by the firm.

"FOURTH. The books of the firm shall be closed as of the date of January 31st of each and every year, and when the profits, if any, be ascertained and passed to the credit of the respective partners, they shall be drawn and applied as follows, to-wit: Of the proportion belonging to Dowling, and which each shall be entitled to use, an amount not exceeding fifteen hundred dollars in any one year for the payment to Edward P. Ferry of their individual indebtedness to him and the same shall be so applied. Ferry shall be entitled to draw an amount that shall equal the amount drawn by both Dowling and White for his own disposal. The balance remaining of the profits may be used by the partners or applied to their increase of capital as shall upon consultation and agreement be deemed for the best interests of the business.

"In witness whereof the parties have hereunto set their hands the day and year first above written.

"EDWARD P. FERRY.
"GEORGE E. DOWLING.
"FRANK H. WHITE."

The parties did business under this agreement until the firm of F. H. White & Co. was dissolved, on May 31st, 1883. The saw mill operated by the firm was built before the partnership agreement was made. The capital to build the mill was provided by Edward P. Ferry. The capacity of the mill was from fifty thousand to sixty thousand feet of lumber per day according to the quality of the raw material and its average gross earnings were from one hundred to one hundred and twenty-five dollars per day, its average daily expenses something less.

The firm employed on an average, from thirty to thirty-five men. The firm, during its entire existence, was engaged in sawing lumber by the thousand for people from whom such work could be obtained, and did not engage in any other business. The most of the work was done for A. Ballard of Chicago, and Ferry & Bro. of Grand Haven, Mich. During the time the firm did business, it sold some lath, because parties would not pay the bill for manufacturing it, also some slabs and a small amount of cull lumber.

The firm never purchased any property of any kind to manufacture or to sell, and never purchased any kind of property, except so far as was necessary to keep the said mill in repair, and a sufficient amount of teams and tools on hand to do business with.

From July 5th, 1877 to Jan. 1883, the firm of F. H. White & Co. kept a bank account at the First National Bank of Whitehall, Mich.

During the existence of the said firm of F. H. White & Co., the firm drew some drafts to collect bills for sawing lumber: Made some promissory notes, some to employes for wages, some for mill supplies and repairs, one for insurance on the mill and some to raise money to pay Mr. Edward P. Ferry his share of the profits of the business in which the firm was engaged. The firm also received some notes for property which had become useless in the business and which for that reason was sold. Mr. Edward P. Ferry never signed the firm name to any notes given in the firm business.

The defendant in error offered evidence tending to show that during the time the firm in question did business, it used a letter heading in the following form: "F. H. White & Co. Manufacturers of lumber, Montague, Mich." This evidence was objected to by counsel for the plaintiff in error as being irrelevant and was admitted by the court, to which ruling the said counsel for the plaintiff in error excepted.

The defendant in error offered no proof at the trial that it had any knowledge that the firm of F. H. White & Co. had kept a bank account or had ever given or received any promissory notes or bills of exchange. Or that it had any knowledge whatever of the business of the said firm of F. H. White & Co. Neither did the defendant offer any evidence at the trial tending to show that it was usual or ordinary for firms engaged in the business that F. H. White & Co. were engaged in to make notes or bills of exchange. No evidence was offered at the trial tending to show that Mr. Edward P. Ferry had any express authority to sign the name of F. H. White & Co. to the notes in suit.

The court, at the conclusion of the trial, directed the jury to find a verdict in favor of the defendant in error for the sum of $17,791.45, to which charge and instruction the counsel for the plaintiff in error then and there duly excepted.

ASSIGNMENTS OF ERROR.

I.

There is error in this, to-wit, that by the record aforesaid it appears that on the trial of the issue in the said cause in the said circuit court the counsel for the said National Exchange Bank of Boston offered in evidence three certain promissory notes, all purporting to be made by "F. H. White & Co.," and bearing date respectively, "Oct. 17th, 1882," "Nov. 27th, 1882," and "Jan. 15th, 1883," which offer was objected to by the counsel for the said George E. Dowling, the plaintiff in error, because the execution of the said notes had not been properly proven, and because from the evidence then already adduced it appeared that the said notes were made without the knowledge or consent of the said George E. Dowling, and because the firm of F. H. White & Co. was a non-trading firm, and because it appeared that the notes had been filled up without any authority from any one authorized to do so; because it did not appear that the firm of F. H. White & Co. were engaged in any business that authorized the partners thereof to issue notes, and it appeared affirmatively that the partnership was a non-trading partnership, and that the said circuit court overruled the said objections and admitted the said notes in evidence.

II.

There is also error in this, to-wit, that by the record aforesaid it appears that on the said trial of the said issue the counsel for the said National Exchange Bank of Boston on cross-examination of the witness George E. Dowling propounded to him, the said witness, the question following, to-wit: "Did the firm have an account—a bank account or current account—with any merchant in Montague or Whitehall; draw orders on them or others for the payment of their labor?" which question was

objected to by the counsel for the said George E. Dowling as being irrelevant, and that the said circuit court overruled the said objection and allowed said question to be put to and answered by the said witness.

III.

There is also error in this, to-wit, that by the record aforesaid it appears that on the said trial of the said issue the counsel for the National Exchange Bank of Boston, aforesaid, offered in evidence letterheads in the words and figures following, to-wit: "F. H. White & Co., Manufacturers of Lumber, Montague, Mich.," and the admission thereof was objected to by the counsel for the said George E. Dowling as being irrelevant unless brought home to the knowledge of the plaintiff, the National Exchange Bank of Boston, aforesaid, and that it was not brought home to such knowledge, and that the said circuit court overruled the said objection and admitted the said letter head in evidence.

IV.

There is also error in this, that by the record aforesaid, it appears that on the said trial of the said issue the said circuit court charged and instructed the jury impannelled and sworn to try the issue therein to render a verdict in favor of the plaintiff (The National Exchange Bank of Boston aforesaid) and against the defendants (the said George E. Dowling, Frank H. White, Edward P. Ferry and Thomas W. Ferry).

BRIEF AND ARGUMENT.

Under the first assignment of error, we submit that when the notes in suit were admitted in evidence the proof did not show that they had been executed by any person having authority to do so, but on the contrary it then appeared that the notes were executed by Edward P. Ferry, without authority to bind the plaintiff in error in this case.

The plaintiff in error, at the time he filed his plea of the general issue, also filed an affidavit denying the execution of the notes in suit, which affidavit, together with the plea were properly served upon the attorneys for the

defendant in error. (Record page 3.) This affidavit denying the execution of the notes was filed and served pursuant to Rule No. 28 of the circuit court of the United States for the Western District of Michigan, which reads as follows: "Upon the plea of the general issue in an action upon any written instrument under seal or without seal, the plaintiff shall not be put to the proof of the execution of the instrument or the handwriting of the defendant, unless the defendant, or some one in his behalf, shall file and serve a copy of an affidavit denying the same, and this rule shall apply in actions brought against endorsers as well as other parties, and shall also apply in favor of a defendant in cases where claims by way of set-off are insisted upon by him. Such affidavit shall be filed, when by the defendant, with the plea, and when by the plaintiff, within ten days after service of the specific set-off claimed; but the court may, upon proper showing, enlarge the time for filing such affidavit."

By filing the affidavit denying the execution of the notes, the burden of proof was placed upon the plaintiff in the court below to show that Edward P. Ferry had authority to sign the name of the firm of F. H. White & Co. to the notes in question before they were received in evidence. When the notes were received by the court, the evidence did not show such authority.

The articles of co-partnership by which the firm of F. H. White & Co. was formed, and under which the firm was doing business had at that time been offered in evidence. (Record page 104.)

The first paragraph of the co-partnership agreement reads as follows:

"Articles of co-partnership entered into this first day of February, A. D. 1873, by and between Edward P. Ferry of Grand Haven, Michigan, George E. Dowling and Frank H. White of Montague, Michigan, for the purpose of carrying on the business of *sawing* lumber, pickets and lath at the said village of Montague in the steam saw mill lately there erected."

The second section of the co-partnership agreement fixed the capital of the firm at the sum of $35,551.65, of

which Edward P. Ferry contributed $16,804.38 and George E. Dowling and Frank H. White, $8,402.19 each; and provides that no part or amount of said capital shall be diverted or used otherwise than in the business by either of the partners during the life of the agreement. (Record page 104.) It also appeared at the time the notes in question were received in evidence by the court, that the name of F. H. White & Co. signed thereto was written by Edward P. Ferry, that such signatures were made in the Territory of Utah and that the notes were sent in blank by said Edward P. Ferry to Andrew Thompson of Grand Haven, Michigan, who was, at the time, book-keeper for the firm of Ferry & Bro., which last named firm was composed of said Edward P. Ferry and Thomas W. Ferry his brother. (Record, pages 103–105.)

And that said notes were filled up by the wife of said Thompson at the request of Thomas W. Ferry, in varying amounts. (Record, pages 105 and 106.)

The notes in question were endorsed by the name of Ferry & Bro. by said Thomas W. Ferry, before they were filled up. (Record page 106.)

Dowling and White, the other two partners in the firm of F. H. White & Co., had no knowledge of the making or issuing of these notes, and neither one of them ever authorized Thompson to fill them up or Edward P. Ferry to sign the name of F. H. White & Co. to the notes. (Record, page 106.)

We submit that at this stage of the case the evidence showed first, that the firm of F. H. White & Co. was a non-trading or non-commercial firm; and secondly, that the making and issuing of the notes in suit, under the circumstances shown, was a fraud upon White and Dowling.

The court held at the trial of this case that the making and negotiating of the notes was a fraud upon the rights of White and Dowling. (Record, page 87.)

Therefore, the notes, at this stage of the case, were not admissible in evidence.

By the articles of agreement already referred to, under which the firm of F. H. White & Co. was formed and was

doing business, its business was expressly limited to the work of *sawing* lumber, lath and pickets for other people. No provision was made for buying logs to saw or for selling any of the products of the mill. This was a firm in occupation only, and was, therefore, a non-trading or non-commercial firm, and was governed by the law applicable to such firms. A partner in such a firm has no power to bind his co-partners by making accommodation negotiable paper like the notes in question without having express authority for that purpose.

In Irwin vs. Williar, 110 U. S., 505, the Court says: "The liability of one partner for acts and contracts done and made by his co-partners without his actual knowledge or assent is a question of agency."

In Graves vs. Kellenberger, 51 Ind., 66, the Court uses this language: "The law of partnership to some extent is a part of the law of principal and agent, but because two persons are partners it does not follow that each may bind the other in any and all matters. The matter must be one which comes within the scope of the partnership business; if it is not, one partner cannot bind the other any more than an agent can bind his principal in a manner which is foreign to the business of the agency. If an act can be said to have been necessary for carrying on the business of the partnership in the ordinary way, the firm will prima facie be liable although the act is not authorized by all the partners; but if the act was not necessary for the carrying on of the business of the partnership in the usual way, the firm will not be liable.

Dickinson vs. Valpy, 10 B. & C. 128.
Hager vs. Mounts, 3 Blackf. 57.
Hickman vs. Reineking, 6 Blackf. 387.
1 Lindley Part., 192-195.
Story Part., Sec. 110 et. seq.
Ditts vs. Lonsdale, 49 Ind., 521.

The plaintiff could only succeed by proving, the execution of the note having been denied under oath, that the transaction was one coming within the scope of the ordinary affairs of the firm."

In Bank vs. Noyes, 62 N. H., 41, which, so far as we cite it now, was a motion for a new trial, it having been held

that the partnership in question in the case was a non-trading firm, the court said: "Upon a new trial, the plaintiff must show, in order to recover, authority from Glines to Noyes to give the note in suit, or knowledge on the part of Glines that it was given, or that it was necessary in the course of their business, or usual in similar partnerships for one partner to give promissory notes in the name of the firm."

In Pooley, Barnum & Co. vs. E. Whitmore, 10 Heiskell, 437–438, the court, in speaking of the kind of partnership here in question, said: "The consequence of this distinction between trading and non-trading partnerships is very important in reference to the main defense relied upon in this case. If a partner in a banking firm, for instance, should endorse a bill or note for his private debt, and it should get into the hands of a bona fide holder without notice, his firm would be bound by it. The endorsing or making such paper being the usual mode of conducting that business, the public have a right to suppose that each partner is empowered to accept or endorse for the firm and are not bound to inquire whether in a given instance the act is done with the assent of his co-partners; but not so with a partnership in occupation merely whose business does not ordinarily require dealing in commercial paper. One who becomes a member of such a firm does not confer implied power on his co-partner to bind him by dealing in bills or notes. He is not clothed with apparent power so to bind his firm, and no person dealing with the firm has a right to suppose that the powers of one member are more extensive than is implied by the ordinary made of conducting such business. If two persons are associated in the practice of law and one of them without or against the consent of the other should endorse a note or bill for his private purpose, no one buying such bill could succeed on the plea that he was a bona fide holder without notice, for the reason that by forming such an association the several partners do not hold each other out to the world as empowered to use their names as makers or endorsers of negotiable paper."

In Horn vs. Newton City Bank, 32 Kansas, 522, the court, speaking of non-commercial or non-trading partnerships and the powers of partners therein, holds that in such partnerships one partner has no authority to make a promissory note in the name of the firm or to bind the other partners unless the latter had been previously consulted and consented to the transaction; and whoever deals with a partner who is a member of such a firm must at his own peril inform himself of the nature of the partnership. In this case the bank purchased the note in question before maturity for a valuable consideration, and the court holds that it was a bona fide purchaser and holder of the note; but the court also holds that this fact did not prevent the other partner from insisting on the defense.

The Supreme court of Missouri, in Deardorf vs. Thatcher, 78 Mo., 128, hold that "To make a non-trading firm liable on mercantile paper, it must be shown either that the making of it was consented to in advance or subsequently ratified by the partners not signing, or else that from the constitution and particular purpose of the firm the power was necessarily or usually exercised."

In the case of Davis vs. Richardson, 45 Miss., 508, the Court in speaking upon the question now under consideration says: "The doctrine of the cases then resting on sound reason is, that a partner, unless he is a member of a commercial firm or one engaged in general promiscuous trading, has no implied authority to bind his firm by borrowing money and executing promissory notes, mortgages or other securities unless the money is necessary for the business, and such pledge of the credit of the firm is usual as shown by the practice of his firm or others in similar business, which facts must be shown in evidence in order to sustain the transaction. When Belcher borrowed the money and executed the lien contract in June, 1867, it was incumbent on Richardson & May to know the extent of his authority to bind his co partners."

This seems to be the general rule upon the subject which there is no conflict.

Lucas vs. Baldwin, 97 Ind. 471.

Crossthwait vs. Ross, 1 Humphreys (Tenn.) 29-30.

In Levi vs. Latham, 15 Neb. 509, the Court, speaking upon the subject here under consideration, and in regard to the power of partners in non-trading partnerships to bind their co-partners by notes, uses the following language: "We think the law is well settled that one member of a non-trading partnership has no authority to bind his co-partner by note made by him in the firm name without express authority therefor from his co-partner, or where the giving of such instrument is necessary to the carrying on of the partnership business, or is usual in similar partnerships; and the burden is upon the party suing upon the note given by one member of such firm to prove such authority, necessity or usage. The same doctrine is enunciated in

Ulery vs. Ginrich, 57 Ill., 531.
Hunt vs. Chapin, 6 Lansing (N. Y.) 139.
Newman vs. Richardson, et. al., 9 Federal Reptr., 865."

We therefore submit that there was no such evidence in the case as is required by the authorities cited when the notes in question were offered and received by the Court, and that the reception of the notes, in the absence of such proof as is required by the authorities cited, was error for which the judgment in this case should be reversed.

II.

We do not insist upon the second assignment of error.

The third assignment of error is based upon a ruling of the court below, admitting in evidence a letter head in the following form: "F. H. White & Co. Manufacturers of Lumber, Montague, Mich." The evidence in relation to this exception is as follows:

Q. This form of letter head was the form used by the firm of F. H. White & Company, was it not?

A. No, sir.

Q. Well, it was used by them in that particular instance, wasn't it?

A. It happened to be.

(Record, page 111.)

We submit that the admission of this letter head was erroneous. The use of this letter head is exceptional.

So far as appears this was the only time this letter head was used.

Irwin vs. Williar, 110 U. S. 499.

III.

The Court charged and instructed the jury, at the conclusion of the trial of this case in the Court below, to render a verdict in favor of the defendant in error, plaintiff in the Court below, against all the defendants, of whom the plaintiff in error was one, for the sum of $17,791.45. (Record page 128.)

This constitutes the fourth assignment of the plaintiff in error. (Record page 142.)

Under this assignment we wish to state a little more fully in relation to the business of the firm of F. H. White & Co., the purposes for which the firm was organized, and the manner of conducting its business.

Evidence was adduced at the trial tending to show that the sole business of the firm of F. H. White & Co. was that of sawing lumber, lath and pickets for other parties, by the thousand or for hire.

The plaintiff in error testified that he had seen the articles of co-partnership under which the firm of F. H. White & Co. commenced business, and that the business was carried on under these articles; that no business was carried on by the firm except the business specified in the articles of agreement. That the firm purchased no logs to be manufactured into lumber during its existence, but sawed by the thousand only. The logs were delivered to the mill by the owners of them. The firm never bought any lumber. (Record page 107.)

F. H. White, a member of the firm of F. H. White & Co., testified at the trial that the firm manufactured no logs belonging to it but sawed entirely by the thousand, for other parties, and that was the sole business of the firm. (Record page 115.)

The plaintiff in error also testified at the trial that the first information he had of the existence of the notes in suit or either of them, was on the 24th day of February, 1883, and then he only had knowledge of the existence of

the one bearing date October 17th, 1882; it was after the maturity of that note and the information he received in regard to what that was, was, that it was presented to him for payment at Montague in behalf of the plaintiff in this case, and he did not learn of the existence of the other two notes positively until the commencement of this suit; that he never saw them until the first trial of of this case. That these notes were not, nor was either of them given in the business of the firm of F. H. White & Co. in any way, nor for the benefit of said firm, nor did such firm every receive any benefit whatever from said notes or either of them. (Record, pages 106, 107.)

This testimony was not disputed and it was not claimed at the trial that Edward P. Ferry had express authority from the other members of the firm to sign these notes.

The firm of F. H. White & Co. was organized for the purpose of carrying on the business of sawing lumber, lath and pickets at the village of Montague, Michigan. (Record, page 104.)

It was provided in the articles of agreement that no amount of the capital of this firm should be diverted or used otherwise than in the business of the firm by either of the partners. (Record, page 104.)

During its existence the firm sawed lumber principally for A. Ballard, of Chicago, and Ferry & Bro., of Grand Haven, Michigan, and it did not, during its existence, use or have any occasion to use any bank acommodation, to the knowledge of the plaintiff in error. (Record page 108.)

This charge of the Court was erroneous in two respects:

First. The firm of F. H. White & Co. was a non-trading or non-commercial firm, and no evidence was offered at the trial to show that Edward P. Ferry had authority to sign the firm name to the notes in question, therefore the notes are void as to the plaintiff in error, void in the hands of anybody, void in the hands of a bona fide purchaser.

What is a non-trading or non-commercial firm?

Kimbro vs. Bullitt, et. al., 22 Howard (U. S.) 256, is a case decided by this Court in 1859. It was an action of assumpsit brought to recover upon three bills of exchange. The

question as to what constitutes a non-trading or non-commercial partnership is involved in the case. The case was argued by Mr. J. P. Benjamin for the defendant in error, no counsel appearing for the plaintiff in error. Mr. Benjamin, in his brief, says that "the test of the power to draw bills and notes in the name of a firm is stated to be whether the business is to buy and sell." The opinion of the Court was delivered by Mr. Justice Clifford, and at page 268 he says: "But whenever the business according to the usual mode of conducting it imports in its nature the necessity of buying and selling, the firm is then properly regarded as a trading partnership"

We submit that if the business of a firm according to the usual mode of conducting it does *not* import in its nature the necessity of buying and selling, the firm would be a non-trading or non-commercial partnership. In the case above cited the firm was engaged in farming, in running a steam saw-mill and in *general trading*. The case was submitted to the jury who found that it was a commercial partnership and the Court said in the opinion that the finding of the jury was conclusive.

Mr. Bates, in his Law of Partnership, Sec. 327, says: "Buying and selling has been said to be the test of a trading partnership. But that a partnership is formed to sell is no test at all and it is difficult to conceive of a partnership in which purchases are not necessary and in many non-trading firms constantly necessary. Thus, farmers must constantly buy their seeds, miners their blasts, lawyers their stationery. It should rather be said that if the partnership contemplates periodical or continous or frequent purchasing, not as incidental to an occupation but for the purpose of selling again the thing purchased either in its original or manufactured state, it is a trading partnership, otherwise not."

The case of Cocke vs. The Branch Bank at Mobile, 3 Ala., 175, was an action on a promissory note for the sum of $4,609, signed by J. F. and W. Cocke. The bank was a bona fide purchaser of the note. The court below charged the jury that "The want of consideration was not a matter for them to investigate. If one gives his name to

another in blank, he thereby puts himself in the power of that other to any amount he thinks proper to use the blank. A partner cannot commit his co-partner for anything not connected in some manner or other with their partnership business, and if this note was made for any other purpose than in the course of the business Lee & Langdon, to whom the note is payable, could not recover of W. Cocke, who it seems was not privy to the transaction, but the question is, Was the bank acquainted with the circumstances under which the note was made? If so, it cannot recover, otherwise it must."

The firm of J. F. & W. Cocke were tavern keepers, and purchased spirituous liquors for the purpose of selling and using at their tavern. The court held that the charge above stated was erroneous. That the firm of J. F. & W. Cocke was a non-trading firm, and that W. Cocke, who was not privy to the transaction, was not bound by the note. The court says, at page 180: "It is difficult to conceive of any partnership business which does not require some purchases to be made in the usual course of it, and this fact is conclusive to show that the mercantile law does not attach to partnerships for such *a case merely*, for otherwise the question of ship owners and of mining companies would be within it. The law presumes that the bank if it inquired at all into the partnership of the defendants must have received information that they were not partners in a mercantile trade, but only in the business of tavern keeping."

The court says, at page 178: "It is not denied that a co-partnership may be formed with respect to any legal business, and the acts of one partner with reference to any matter connected with the joint business will bind the others. But it is insisted that the liability of a partner to pay a note executed by co-partner when it has been put in circulation without any consideration connected with the partnership business, only extends to cases of mercantile partnership. When the subject is examined, it will be found that the law is adopted into the common law from the usages and customs of merchants and applies only to partnerships in trade."

The case of The National State Capital Bank vs. Noyes, 62 N. H., 35, was an action upon a promissory note for $2,375, signed by M. C. Noyes & Co., payable to the order of Waumbek Lumber Company and by them endorsed to the plaintiffs. The plaintiffs were held to be bona fide purchasers of the note. The firm of M. C. Noyes & Co. was engaged in operating a saw-mill, manufacturing and selling lumber. The firm did not purchase lumber of others to sell. The firm was composed of M. C. Noyes and one Glines. The note was signed by Noyes without the knowledge or consent of Glines. It was held that this firm was a non-trading or non-commercial partnership. At page 39 the court says: "But the defendants ask for a new trial upon the ground that through misfortune they were prevented from making their defense and that injustice would otherwise be done. Upon this motion the hearing was had. The position is now taken that the firm of M. C. Noyes & Co. was a non-trading or non-commercial firm and that there was no power, express or implied, for either partner to bind the firm by promissory note. In a trading or commercial partnership the extent of the partner's power to bind the firm is a question of law. By the commercial law each partner is presumed to be entrusted by his co-partners with a general authority in all the partnership affairs. Any agreement among the partners restricting the authority of one partner as a general agent for the others is operative only between themselves. But in non-trading partnerships such as farming and mining partnerships, and partnerships for practicing lawyers and physicians the power of a partner to bind his co-partners is a question of fact. The partners are in no proper sense engaged in trade. In such a partnership a partner does not generally possess power to bind the firm, and consequently the extent of his power is not fixed by the rules of law, but each case is left to be decided on its particular facts. When, therefore, one seeks to hold a non-trading firm upon a negotiable instrument made by a single partner, he must prove either express authority or that the giving of promissory notes is the custom and usage in

the same business, or such facts as will warrant the conclusion that the partner had been invested by his co-partners with the requisite authority."

Citing.

Judge vs. Braswell, 13 Bush., 69.
Smith vs. Sloan, 37 Wis., 285.
Pooley vs. Whitmore, 10 Heisk., 629.
Ricketts vs. Bennett, 4 Man., Gr. & S., 686.
Hasleham vs. Young, 5 A. & E. (N. S.), 833.
Hedley vs. Bainbridge, 3 A. & E. (N. S.), 315.
Levy vs. Pyne, 1 Car. & Mar., 453.
Bramah vs. Roberts, 1 Bingham, N. C., 469.
Dickinson vs. Valpy, 10 B. & C., 128.
Greenslade vs. Dower, 7 B. & C., 635.
Dow vs. Moore, 47 N. H., 419.
Wagner vs. Freschl, 56 N. H., 495.
Bank vs. Rider, 58 N. H., 512.
Kimbro vs. Bullitt, 22 Howard, 256 and 268.

The case of Pease vs. Cole, 53 Conn., 53, was an action on a promissory note for $750, given for money loaned. The note was signed by the firm name of Cole & McCarthy, by McCarthy, one of the partners. The firm was organized for the purpose of conducting a theater in the city of Hartford. The court held that "The firm was a non-trading firm and that McCarthy could not bind Cole by signing the firm name to the note."

Pooley, Barnum & Co. vs. E. Whitmore, 10 Heiskel (Tenn.), 629, was an action on two promissory notes in the hands of a bona fide purchaser. The notes were executed by W. A. Whitmore, the deceased partner, in his lifetime, to the order of Whitmore Brothers, and endorsed in the firm name to one Cannon, and by him endorsed to Pooley, Barnum & Co. before maturity and for value. The notes were not given in the firm business but were accommodation notes. The firm of Whitmore Brothers was composed of Edwin Whitmore and W. A. Whitmore and was engaged in publishing The Public Ledger, a newspaper in the city of Memphis, and also conducted a general job printing office in that city. The court held that the firm of Whitmore Brothers was a non-mercantile or non-trading firm, and that there could be no recovery against Edwin Whitmore one of the firm.

Deardorf vs. Thatcher, 78 Mo., 129, was an action on a

promissory note executed by Webster, a member of the firm in the firm name of Thatcher, Webster & Ellison. Thatcher and Ellison denied the execution of the note under oath. The firm was engaged in the insurance, real estate and collecting business in Kansas City. It was held that this was a non-trading firm and that there could be no recovery against Thatcher and Ellison.

Levi vs. Latham, 15 Neb., 509, was an action upon a promissory note executed in the firm name of Monroe and Levi. The firm was engaged in the business of keeping a livery stable. The note was given without the knowledge or consent of Levi and none of the proceeds of it were used by the firm or went into the assets of the partnership. The court held that the firm of Monroe & Levi was a non-trading or non-commercial firm and that there could be no recovery against Levi.

Graves et al. vs. Kellenberger, 51 Ind., 66, was an action upon a promissory note signed by Graves & Graham. Graves answered under oath denying the execution of the note. The court found for the plaintiff, a motion for a new trial on account of the insufficiency of the evidence was made and overruled and this was assigned as error. Graves & Graham were partners in the business of milling, Graham owning and furnishing the mill and Graves furnishing the money capital used in the business but having at the time no interest in or ownership of the mill. The note was signed in the firm name by Graham without the knowledge, consent or ratification of Graves. It was given for a lightning-rod put up on the mill. The question was, was this an act within the scope of the partnership business. The court held that the note was not given in a matter within the scope of the partnership business and that Graves, one of the partners, could not be held upon it.

Bays vs. Conner et. al., 105 Ind. 415, was an action on a promissory note. Conner and Blue were partners in the printing business under the firm name of The Central Printing Company. Blue signed the firm name to the note. The business of the partnership was confined to the printing business. The evidence showed that the

note in suit was executed in the firm name of The Central Printing Company by Arthur L. Blue, without the knowledge or consent express or implied of his co-partner, Conner.

The court held that the firm was a non-trading or non-commercial co-partnership, and that Conner could not be held upon the note.

The case of Horn vs. The Newton City Bank 32 Kas. 518, was an action upon a promissory note originally given to H. A. Pitts & Sons, Manufacturing Company, by Horn & Long, co-partners in running a threshing machine. There had been a material alteration of the note made by Horn, one of the co-partners. The court held that after the alteration, Long, the other partner, could not be held upon the note, because the firm of Horn & Long was a non-trading partnership.

The case of Hunt vs. Chapin, 6 Lansing (N. Y.) 139, was an action upon a promissory note for $2,562.50. The note was signed by Cowen & Chapin, agents. The business of the defendants was the cultivation and raising of cotton on land which they worked as farmers or planters in the State of Mississippi. The court says on page 144: "I think it cannot be insisted, from the character of the business itself, that Cowen had authority to borrow money or to give notes in conducting and managing the plantation. Nor does the proof show in any way that the exercise of such power was necessary for such a purpose. The question was also destitute of any evidence of the universal usage of the cotton states for merchants to make advances on the crops so as to authorize the court to regard it as a business of which they can take judicial notice."

"The testimony establishes that Chapin had furnished every article and all the materials necessary to carry on the business, and that the hands were not to be paid until the end of the season, in December or January. No money was, therefore, required until that time, while the money was actually borrowed by Cowen, and the note given in the month of July previous, and not a dollar of the funds used for the business of the plantation, but appropriated by Cowen for his individual benefit."

The court, in its opinion at page 143, cites sec. 102a of Story on Partnership, which is in this language: "This doctrine (that one partner can make commercial paper) is not applicable to all kinds of partnership, but is generally limited to partnerships in *trade and commerce*, for in such cases it is the usual course of mercantile transactions and grows out of the general customs and laws of merchants, which is a part of the common law and is recognizable as such. But the same reason does not apply to other partnerships unless it is the common custom or usage of such business to bind the firm by negotiable instruments, or it is necessary for the due transaction of business."

See also

Prince vs. Crawford, 50 Miss., 344.
McCrary vs. Slaughter, 58 Ala., 230.
Benton vs. Roberts, et. al. 4 La. Ann., 216.

In Judge vs. Braswell, 13 Bush. (Ky.), 67, the rule is stated as follows: "In non-commercial partnerships one who seeks to hold a firm bound by the contract made by a single member must be able to show either express authority, or that such is the custom and usage of the particular branch of business in which the firm is engaged, or such as will warrant the conclusion that the partner has been invested by his co-partners with the requisite authority."

The court also holds in this case that the power of a partner in a non-commercial firm to bind his co-partners is a question of fact.

We therefore submit, that the court erred in holding as a matter of law that the firm of F. H. White & Co. was a trading or commercial partnership, and that Edward P. Ferry had authority to sign the firm name to the notes in suit so as to bind the plaintiff in error.

SECOND. We submit that the charge of the court was erroneous because the case should have been submitted to the jury to find from the evidence what the nature of the business of F. H. White & Co. was; what was necessary and proper to its successful prosecution; what was involved in the ordinary and usual course of its manage-

ment; at the place and time where it was carried on. There was no evidence in the case at the trial tending to show that the use of such commercial paper, as the notes in suit was appropriate or reasonably to be expected, or that the firm ever made use of such paper with the common knowledge of the members of the firm, or made use of it at all. The plaintiff in error testified that the firm of F. H. White & Co., during its existence, did not use or have any occasion to use any bank accommodation to his knowledge, information or belief, they had no occasion for it. That he learned some years after this firm had been dissolved that some temporary arrangements had been made on two or three occasions but that he did not know of it at the time. (Record, page 108.)

The firm of F. H. White & Co. did business at the village of Montague, Michigan. The notes in question were sent from Grand Haven, Michigan, to the city of Boston for discount and were there discounted by the defendant in error. There is no evidence in the record showing or tending to show that the defendant in error ever made any inquiry as to the business of the firm of F. H. White & Co., where it was located, or the kind or character of the partnership. It received the notes from Ferry & Bro., one member of that firm (Edward P. Ferry) being a member of both firms. The evidence shows that the plaintiff in error never knew or had any knowledge that the defendant in error had discounted any note of F. H. White & Co. other than the notes in this suit until he heard the deposition, printed in the record, read; and he had no knowledge of the notes in this suit being given or discounted until after their maturity. (Record, page 127.)

That the firm of F. H. White & Co. never had any dealing or business transactions whatever with the defendant in error. (Record, page 128.)

In the case of Irwin vs. Millair, 110 U. S., page 506, this court makes use of the following language: "What the nature of that business in each case is, what is necessary

and proper to its successful prosecution, what is involved in the usual and ordinary course of its management by those engaged in it, at the place and time where it is carried on, are all questions of fact to be decided by the jury, from a consideration of all the circumstances which, singly or in combination, affect its character or determine its peculiarities, and from them all, giving to each its due weight, it is its province to ascertain and say whether the transaction in question is one which those dealing with the firm had reason to believe was authorized by all its members. The difficulty and duty of drawing the inference suitable to each case from all its circumstances cannot be avoided or supplied by affixing or ascribing to the business some general name, and deducing from that, as a matter of law, the rights of the public and the duties of the partners. Dealing in grain is not a technical phrase from which a court can properly infer as matter of law authority to bind the firm in every case irrespective of its circumstances; and if, by usage, it has acquired a fixed and definite meaning, as a word of art in trade, that is matter of fact to be established by proof and found by a jury."

In Judge vs. Braswell, 13 Bush (Ky), 75, already cited: The court say: "In non-commercial partnerships one who seeks to hold the firm bound upon a contract made by a single member must be able to show either express authority or that such is the custom or usage in that particular branch of business in which the firm is engaged or such facts as will warrant the conclusion that the partner had been invested by his co-partners with the requisite authority, the distinction being that in commercial partnerships the extent of the partner's power to bind the firm is a question of law, while the power of a partner in a non-commercial firm to bind his partners is a question of fact. Thus, the business of a commercial partnership being ascertained, and the nature of a contract made by a single member and the circumstances attending it being known, the court may generally determine as matter of law whether the contract was within the scope of the implied powers of a partner. Not so, how-

ever, in reference to a contract made by a member of a non-commercial partnership."

See

National State Capital Bank vs. Noyes, 62 N. H. 35 above cited.

Kimbro vs. Bullitt, 22 Howard (U. S.) 256.

We submit that this case, as the evidence is presented in the record, is one peculiarly within the province of a jury to determine, and that the cases cited fully sustain the proposition that the court below, instead of directing a verdict, should have permitted the jury to determine the facts.

IV.

At the trial the counsel for the defendant in error laid much stress upon the facts that some property had been bought and some sold by the firm of F. H. White & Co., and that the firm had made certain paper and had taken certain promissory notes during the time it did business. The plaintiff in error explained these questions at the trial in this language: "That the three orders above referred to, bearing his endorsement, were all in part payment of what was coming to the firm from the firm of F. H. White & Company, his dividends or profits from that firm; that he did not discount them in any way, but paid his debt directly with them to E. P. Ferry. At the time the partnership was formed the mill was already built. Ferry, Dowling & Company originally built the mill. The expense of it, however, was assumed by E. P. Ferry. The firm of F. H. White & Co. got the mill from E. P. Ferry, F. H. White giving his note to Ferry for one-quarter the value of the mill and the witness Dowling giving his notes to said Ferry for one-quarter, and E. P. Ferry retained the other one-half of the mill. The orders above referred to, endorsed by me, were given to E. P. Ferry towards satisfying my indebtedness on the mill through him on the purchase of the mill or some other indebtedness which I owed said Ferry. They were not negotiated nor discounted and did not pass through the bank in any shape or form. I settled direct with Ferry and gave him these orders as vouchers. The order read-

ing as follows: 'F. H. White & Co., manufacturers of lumber, Montague, Mich. Dated July 21st, 1880. Messrs. Ferry & Brother will please pay the Ottawa Iron Works sixty-five dollars and charge to F. H. White & Co.,' was given in payment of a machine-shop bill for repairs by the Ottawa Iron Works on the mill of F. H. White & Co., and the other order reading as follows: 'Ferry, Dowling & Co., manufacturers and dealers in lumber, shingles, laths, and pickets. Montague, Mich., Jan. 31st, 1881. Messrs. Ferry & Bro., pay to Ferry, Dowling & Co. the sum of twenty-three hundred twenty-five and 28-100 dollars. Charge to F. H. White & Co.,' was given to pay Ferry, Dowling & Company in what F. H. White & Co. owed them. Such indebtedness was for many things. They did some dredging at one time, dredging out about the mill, for F. H. White & Co.'s mill. I, acting for Ferry, Dowling & Company, hired the dredge at Grand Haven and paid for the dredging and charged it up to F. H. White & Company. The dredging was to facilitate getting the logs into the boom and other things of that kind —matters pertaining exclusively to the carrying on of the mill of F. H. White & Company and nothing else, and the order was given for no other purpose. The draft for $369.15, endorsed by me, a copy of which is given above, was endorsed to the order of Ferry & Brother by me, I think, for something that I owed Ferry & Brother for some personal transaction at Grand Haven; and the draft of February 10th, 1879, for $3,042.06, a copy of which is given above, was turned over by me to E. P. Ferry for some of my personal indebtedness to him. It is endorsed in blank and, if I recollect right, that was a settlement made in person either at my office or his office. The draft was simply endorsed and handed over to E. P. Ferry. All the drafts that were drawn upon Ferry & Brother by the firm of F. H. White & Company were drawn against what Ferry & Brother owed F. H. White & Company for sawing and for no other purpose. F. H. White & Company never had any other account with them and they were drawn for the sole purpose of collecting the saw bill of F. H. White & Company. There were, I think, two dif-

ferent times between 1873 and 1883 when some small notes were given by the firm of F. H. White & Company in consequence of a sort of financial panic. It was impossible to get cash here anywhere. They were given to employes about the mill for their labor. They were in small amounts. I don't think they exceeded one hundred dollars.

Q. Were these the only notes given during the existence of your firm, to your knowledge?

A. To my knowledge, yes, sir.

Q. Who were they given by?

A. By Mr. White. There was a little lath and slabs sold by F. H. White & Company—refuse matter. It may have amounted to a couple of hundred dollars a year, possibly a little more. The way we came to have the lath upon our hands, there were times when the parties for whom we were manufacturing lumber and lath would not take the lath at the lath mill and pay the cost of manufacturing it and would leave them on the dock, and the company, in order to realize pay for sawing, would have to dispose of the lath, and that was the only way we came in possession of or sold lath, and that didn't occur to any great extent. There might have been some lots left at different times. I remember Mr. Ballard, the party for whom we sawed extensively, refused to take them. He said they were not worth the manufacturing and he would leave them there.

Q. You stated that you heard that the defendant, Edward P. Ferry, drew drafts, one for $3,000 and one for $5,000 from Utah, upon F. H. White & Company. When did you first hear of that? Was it before F. H. White testified on the stand on the former trial of this case?

A. About that time.

Q. That is the first knowledge you had of it?

A. Yes, sir. It was after the dissolution of the firm of F. H. White & Company. The firm of F. H. White & Company was at that time indebted to E. P. Ferry personally, in the fall of 1882. At the time the notes in suit in this case were given the firm of Ferry & Brother were indebted to F. H. White & Company in the sum of from

$15,000 to $19,000. The firm of F. H. White & Co. were indebted to E. P. Perry, in the fall of 1882, in the sum of about $6,000. It was not indebtedness of the firm, but Mr. Ferry's proportionate share of the profits, a share that he would be entitled to. It was a credit to E. P. Ferry for accumulated profits. That is what I mean by being indebted; no other indebtedness to him, simply what stood there as profits." (Record, Pages 113, 114 and 115.)

The four instances referred to are as follows:

One note for $2,000 dated June 14th, 1880.

One note for $2,000 dated May 20th, 1881.

One note for $2,500 dated December 30th, 1882.

One note for $3,000 dated January 20th, 1883.

(Record, pages 121 and 122.)

The four notes were all signed by F. H. White in the firm name of F. H. White & Co.

These notes were made by Mr. White to pay Edward P. Ferry's drafts upon the firm for his share of profits.

The plaintiff in error testified that he learned that these drafts had been drawn about the time Mr. White testified in the first trial of this case. (Record, page 114.)

It will be observed that only two of these notes were dated before the notes in suit, and one of them after the two first notes in suit and the last one after all the notes in suit.

There is no evidence in the record tending to show that F. H. White & Co. ever made a note payable to Ferry & Bro. unless the notes in suit and mentioned in the depositions printed in the record may be so considered.

The counsel for the defendant in error also placed in evidence at the trial, the bank account of the firm of F. H. White & Co. We submit that this evidence cannot bear against the plaintiff in error because a non-trading as well as trading partnership may keep a bank account.

In Smith vs. Sloan, 37 Wis., 296, the court said:

"It may be proper to remark in this connection, by way of illustration, that it is probably a usual practice for one partner in a firm of Attorneys to draw bills in the firm name upon clients for services and disbursements; also checks upon banks for partnership funds; and perhaps,

also, to transfer notes belonging to the firm, by indorsement. In actions involving questions of the validity of such bills, checks or indorsements as against other partners, the party asserting their validity would be bound to establish it in the manner above indicated."

Therefore we respectfully submit, that the judgment of the court below should be reversed.

M. BROWN AND
J. C. FITZGERALD.
Attorneys for Plaintiff in Error.

Office Supreme Court, U. S.
FILED
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JAMES H. McKENNEY,
CLERK.

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, 1891, No 349.

GEORGE E. DOWLING,
Plaintiff in Error,
vs.
THE NATIONAL EXCHANGE BANK OF BOSTON,
Defendant in Error.

BRIEF FOR DEFENDANT IN ERROR.

LYMAN D. NORRIS,
MARK NORRIS,
Counsel for Defendant in Error.

Supreme Court of the United States.

OCTOBER TERM, 1891. No. 349.

GEORGE E. DOWLING,
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THE NATIONAL EXCHANGE BANK OF BOSTON,
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BRIEF FOR DEFENDANT IN ERROR.

FACTS.

This was an action of assumpsit by defendant in error, against plaintiff in error, and Frank H. White and Edward P. Ferry, who were co-partners under the firm name of F. H. White & Co., and Edward P. Ferry and Thomas W. Ferry, who were co-partners under the firm name of Ferry and Bro. (R. 103, f. 180.) The decision below will be found in

30 Fed. R., 412.

Originally there were three separate actions by the same plaintiff against the same defendants.

The first was brought March 12, 1883, on a promissory note made by F. H. White & Co., endorsed by Ferry & Bro. for $5,288.75, dated October 17th, 1882, at four months. (R. 2, f. 2½.)

The second was brought April 12, 1883, on a similar note, dated November 27, 1882, for $5,100.73. (R. 27-8, ff. 48-9.)

The third was brought May 24, 1883, on a similar note, dated January 15, 1883, for $5,391.90. (R. 47-8, ff. 84-86.)

The cases came on for trial November 24th, 1884, before the late District Judge Solomon L. Withey and were then consolidated, (R. 66-7, f. 119,) and thereafter proceeded as one cause.

The first trial resulted in judgment for defendants Dowling & White, who alone defended. (R. 67, f. 120.)

July 1, 1886, a new trial was granted by the present District Judge, for the reason that the late District Judge, Withey, had failed in his life time to settle the bill of exceptions presented to him by plaintiff. (R. 76-79.)

December 21-3, 1886, the cause was again tried before the present District Judge, who directed a verdict for plaintiff for $17,791.45. (R. 83.)

Defendant Dowling alone sues out writ of error, (R. 137,) the other defendants declining to join therein.

Defense Made Below.

The defense made was that the firm of F. H. White & Co., the maker of the notes was a non-trading co-partnership; that the notes were made by Edward P. Ferry, one of the firm members, without the knowledge or consent of his co-partners White & Dowling, and without any authority express or implied. (R. 106, 141-2.)

It appeared on the trial that the firm of F. H. White & Co., was organized February 1st, 1873, by defendants Edward P. Ferry, Geo. E. Dowling and Frank H. White, Ferry holding

one-half interest and Dowling & White each a quarter. The business of the firm was to be "sawing lumber, pickets and lath" at Montague, Mich. Ferry & Dowling were to have charge "of securing the sawing for the mill * * * and the supervision of the financial part of the business, and the supervision of the books of said firm." White was "to have charge of the management of the mill, * * hiring and discharging men and fixing their wages * * to have charge and keep a set of double-entry books, which shall be open at any time for the inspection of either of the partners." (R. 104.)

The firm never engaged in any other business than that agreed on. (R. 107-115.)

They sold lath, cull lumber for other parties, horses for which they had no use, and such things. (R. 189-90, 116.)

They had accounts with various parties for matters connected with the firm business, which accounts were paid from time to time, sometimes by drafts drawn on the debtors. (R. 117-118.)

They had a bank account in which they made deposits against which they drew cheques. (R. 116.)

They drew drafts and sent them through the banks, and paid their debts with them when necessary or convenient in carrying on their business. (R. 117, 118, 119, 122.)

They made promissory notes to pay their debts when necessary or convenient. (R. Idem.)

The firm books and the testimony in the record disclose that during the existence of the firm, aside from the notes in suit, F. H. White & Co. made and used the following commercial paper:

	Paper.	Date.	Amt.	For what Given.	Rec.
1.	Promissory Note.....	10-15-73	$ 225 00	Wages.....	..120
2.	" "	10-15-73	30 00	"	120
3.	" "	10-15-73	10 00	"	120
4.	" "	10-20-73	85 00	"	121
5.	" "	3-30-78	400 00	Repairing Mill.....	121
6.	" "	4-29-79	300 00	" "	121

	Paper.	Date.	Amt.	For what given.	Rec
7.	Promisory Note.....	6-30-79	87 50	Horses.....	121
8.	" "	1-12-80	1,000 00	Repairing Mill.....	121
9.	" "	2-14-80	1,000 00	Renewal of No. 8....	121
10.	" "	5-22-80	630 21	Repairing Mill.....	121
11.	90 Day Acceptance....	5-22-80	520 00	Steam Feed for Mi.l.	121
12.	Promissory Note.....	4-3-80	800 00	Insurance on Mill...	121
13.	" "	6-14-80	2,000 00	E. P. Ferry share of profits.....	121
14.	" "	5-20-81	2,000 00	F. P. Ferry share of profits.....	121
15.	" "	12-30-82	2,500 00	E. P. Ferry share of profits.....	121
16.	" "	1-20-83	3,000 00	E. P. Ferry share of profits.....	121
17.	" "	6-16-83	663 76	Mill Repairs	122

Nos. 5, 6, 8, 9, 13, 14, 15 and 16 were discount'ed at banks by F. H. White as follows:

5 at Lumberman's State Bank, Whitehall, Mich. R. 132.
6 at National Bank, Whitehall, Mich. R. 121.
8 at Merchant's Nat. Bank, Chicago, Ills. R. 132.
9 " " " " " R. 132.
13, Whitehall Bank, Whitehall, Mich. R. 121.
14, Place of discount not given.
15 at Lumberman's Nat. Bank, Muskegon, Mich. R. 122.
16, B. F. Weston. R 122.

The others appear to have been used to pay the current accounts of the firm.

The record also shows the following drafts drawn by the firm by F. H. White on Ferry & Bro., the firm's debtors:

1.	Febuary 1, 1878.....	$ 570 00	to deft. Dowling. R. 111.
2.	" 10, 1879.....	3,042 06	" " " R. 111.
3.	June 30, 1879.....	369 15	to deft. Dowling. R. 111.
4.	January 31, 1881.....	2,325 28	to Ferry Dowling & Co. 113.
5.	July 21, 1880.....	65 00	to Ottawa Iron Works. R. 113.
6.	June 20, 1878.....	30 18	to Dennis Smith & Co. R. 117.
7.	May 10, 1882.....	800 00	to C. A. Hammon, Cashier. R. 117
8.	June 20, 1878.....	98 22	N. W. Oil Co. R. 117-8.
9.	" " "	123 41	E. B. Preston. R. 118.
10.	" " "	45 00	C. L. Hawes. R. 118.
11.	June 10, 1881.....	1,000 00	C. A. Hammond. R. 118.
12.	July 16, 1881.....	900 00	C. A. Hammond. R. 118.

No.'s 7, 10, 11 and 12 were discounted at banks by deft. White.

The firm took promissory notes, viz: R. 129, 133 5.

1.	Dec. 20, 1874.....	$ 80 00	for horse sold.
2.	" " "	125 00	" " "
3.	" " "	100 00	" " "
4.	Dec. 31, 1874.....	60 33	for account due.
5.	August 10,1877.....	716 35	" " "
6.	Sept. 29, "	454 98	" " "
7.	" " "	200 00	
8.	April 20, 1878.....	72 84	
9.	June 4, 1878.....	201 04	
10.	Sept. 10, "	90 00	old John.
11.	January 31, 1879.....	140 10	for account due.
	" " "	346 47	" " "
12.	March 31, 1879.....	147 07	
13.	December 17, 1879....	30 57	
14.	January 12, 1879.....	271 00	
15.	October 7, 1880.....	275 00	
16.	January 31, 1881.....	164 00	
17.	December 20, "	17 19	horse sold.
18.		330 42	
19.	January 21, 1882.....	250 00	2 horses sold.
20.	November 30, "	360 00	
21.	December 20, "	225 00	horses sold.
23.	January 31, 1883.....	13 42	

They used a letter head on which was printed "F. H. White & Co., Manufacturers of Lumber, Montague, Mich." (R. 112.) and their blanks for drafts had the same printed on them. (R. 113–117.)

They kept a bank account, the particulars of which are shown (R. 122–3, 130 Ex C.) They did a business of $30,000 per annum, (R. 112.) The notes in suit were made in the following manner:

Edward P. Ferry signed them in blank in Utah. Thomas W. Ferry endorsed them in blank. They were left with Andrew Thompson who was Ferry & Bro., bookkeeper. By the directions of Thomas W. Ferry they were filled out from time to time by Thompson's wife, and by Thompson transmitted by mail to the defendant in error, by whom they were discounted in the regular course of business and the proceeds passed to the credit of Ferry & Bro., who drew against said amounts until the same was all withdrawn.

The proceeds of the notes were in no way used for the benefit of F. H. White & Co., and the entire transaction was without the knowledge or consent of White & Dowling. (R. 103–106.)

The plaintiff bank discounted these notes in the regular course of business without any notice of any irregularity or infirmity therein, (R. 123-127-85-6.) It had no notice of the partnership articles.

I.

ASSIGNMENTS OF ERROR, NOS. 1 AND 4.

To sustain the defense made it must appear that F. H. White & Co. was a co-partnership of such a character that the members thereof had no authority, *under any circumstances*, to make commercial paper.

If they *had power* to make negotiable paper for the firm's use, then the paper in suit is good in this bank's hands, it being beyond dispute a bona-fide purchaser for value before maturity, and without notice of any defect or irregularity in the issue of the notes.

To sustain the defense in this case, these notes must have been *void* at issue, for lack of power to make them—not voidable—for fraud.

This court has repeatedly held that "when a corporation has power, under any circumstances, to issue negotiable securities, the bona fide holder has a right to presume they were issued under the circumstances which give the requisite authority, and they are no more to be impeached for any infirmity in the hands of such a holder than any other commercial paper."

Coms. of Knox Co. vs. Aspinwall, 21 How, 539.
Gelpecke vs. Dubuque, 1 Wall, 203.
Supervisors vs. Schenck, 5 Wall, 784.
Lexington vs. Butler, 14 Id., 296.
San Antonio vs. Mahaffy, 96 U. S., 314.
Macon vs. Shores, 97 Id., 279.
Bank vs. Barge Co., 52 Mich., 445.

It is only when there is *no authority* for the issue of the securities that the right of a bona fide holder to recover, fails.

Hopper v. Covington, 118 U. S., 150.
Cromwell v. Sac Co., 96 U. S., 51.

If this be the law as to the securities of corporations whose powers are wholly the creation of statue law, of which all must take notice, with how much greater force must it apply to individuals whose powers are not limited—at least not in this case by any notice to defendant in error.

If the agents of public corporations whose powers are known to all to be limited, can estop the corporation by false recitals on the face of its securities, with how much greater force may one partner do the same when he acts within the apparent scope of his powers.

To say upon this record that this paper was *void* for want of authority in Edward P. Ferry to issue it, would be impossible, except by deliberately ignoring the *undisputed facts*.

That the members of this firm had authority, in the course of its business to make commercial paper, admits of no doubt whatever.

From the organization of the firm to the last days of its existence, the defendant, White—who by the way did not have the financial supervision of the business; according to its articles that being in E. P. Ferry & Dowling—made and put on the market, and on the firm's books of account commercial paper whenever it appeared necessary or convenient to do so. All of this paper was entered on the books, to which Dowling had access, and of which he had notice. Some of this paper came to Dowling's hands, and bore his endorsement.

There was no prohibition in the partnership agreement against making commercial paper. It is testified by Dowling & White that—at times at least—it was *necessary* to make such paper to carry on the business. (R. 108-109-110-114-120-121.)

They paid current accounts with negotiable drafts on Ferry & Bro., and with promissory notes. They drew drafts and discounted them at banks to get money to pay their employes. They borrowed money on notes to repair their mill. In fact there never was a time in the history of the firm when the power to make notes was not fully exercised in and about the firm business by F. H. White—and he always made a record of his transactions, on the firm books to which Dowling had free access at all times.

The record fails to disclose a single case in which any partner *objected* to this known exercise of this power.

II.

Counsel for plaintiff in error contend for the rule established by some cases that where a firm is not engaged in *buying and selling*, that there is no authority in the co-partners to make commercial paper *even in the firm business*; and that therefore, this paper is void—not voidable—even in the hands of a bonafide holder.

Smith vs. Sloan, 37 Wis., 295 and cases cited.

Such is not the law.

In cases where partnerships are engaged in *buying and selling* it is settled, that the law implies authority to make commercial paper, and that paper made by one co-partner in such firms though not used in the firm business is binding on the firm, in the hands of a good faith holder for value before maturity.

Wagner vs. Simmons, 61 Ala., 143.
Prince vs. Crawford, 50 Miss., 358.
Lindley on Part., Rapolje's Ed. * 129.
Winship vs. Bank of U. S., 5 Pit, 529.
Kimbro vs. Bullitt, 22 How., 256.
Walworth vs. Henderson, 9 La Ann, 339.
Bank vs. Noyes, 62 N. H., 35.
Lee vs. Ft. Scott Bank, 25 Pa. Reptr., 169.

Harris vs. Baltimore, 20 At. Reptr., 111.
Hoskinson vs. Elliot, 62 Pa. St., 393.
Smith vs. Collins, 115 Mass., 399.

But in cases where the firm is not engaged in buying and selling the question whether partners have the authority to make commercial paper is a question of fact, and such power will be held to exist on proof—

1. Of express authority, or
2. Of the necessity of such power to the successful conduct of the business, or
3. Of the usage of similar firms engaged in the same business, or
4. Of the usage of the particular firm.

Prince vs. Crawford, 50 Miss., 358.
Smith vs. Sloan, 37 Wis., 495.
Gray vs. Ward, 18 Ills., 32.
Bank vs. Noyes, 62 N. H., 35.
Harris vs. Baltimore, 20 At. R., 111.
Irwin vs. Williar, 110 U. S., 499.

In the last case cited the Court said: "The liability of one partner for acts and contracts done and made by his partners without his actual knowledge or assent is a question of agency. If the authority is denied by the actual agreement between the partners, with notice to the party who claims under it, there is no partnership obligation. If the contract of partnership is silent, or the party with whom the dealing has taken place has no notice of its limitations, the authority for each transaction may be implied from the nature of the business according to the ordinary and usual course in which it is carried on by those engaged in it in the locality which is its seat, or as reasonably necessary or fit for its successful prosecution. If it cannot be found in that, it may still be inferred, from the actual tho' exceptional course and conduct of the business of the partnership itself, as personally carried on with the knowledge, actual or presumed, of the partners sought to be charged."

A.

In this case it is not claimed by counsel for defendant in error, that Ferry alone had *express* authority from White & Dowling to make the notes in suit; but it is claimed that authority to make notes was conferred on all partners.

The copartnership articles—never seen by defendant in error—are silent on the subject of borrowing money or making notes (R. 104-5.) It appears from *the uncontradicted evidence of defendants*, that the firm at its inception had no working capital. It had nothing but the mill, which had been built by E. P. Ferry, who sold White and Dowling each a quarter interest therein, taking their notes in payment. (R. 104-5, 113.) This of itself implied a necessity for borrowing money to run the business, and accordingly we find the firm paying its hands in promissory notes the first year of its existence, (R. 120) because at the time there was difficulty in getting money from the banks, (R. 114, 120, 109 f. 190) showing that the firm had at that time applied to banks for loans and been refused. It also appears from the same *uncontradicted evidence*, that at other times the firm found itself without working capital enough to start their mill and had to borrow money to do so.

This was done in 1878, 1879 and 1880. (R. 121) They paid their repair bill with a note on two occasions. (R. 121-2.) They accepted a draft on the firm at 90 days for machinery put into the mill. (R. 121, 129 and 133.) They gave a note for their insurance on the mill. (R. 121.) They paid for horses for use in the business by a note. (R. 121.) They borrowed money on notes at the bank to meet drafts drawn by one partner for his share of the firm profits, (R. 121-22) showing that the firm had no working capital, and that borrowing money was a necessity to the successful prosecution of the business. They many times drew negotiable drafts on their debtors, Ferry Bros., to pay their current working bills, (R. 113, 117, 118, 119 and 120)

and they discounted such drafts at banks to obtain funds to pay their hands. (R. 117-18.)

If this does not show the *necessity* of borrowing money in the conduct of the business, we are at loss to know what would.

B.

The custom of similar partnerships at Montague was not shown—Montague being a small place of about 2,500 inhabitants at that time, and there being in all probability no similar firm in the place.

The actual (but not exceptional) course and conduct of the business of the partnership itself is shown pretty thoroughly by the *uncontradicted evidence* of the defendants, themselves and their firm books, with the contents of which all partners must be presumed to be acquainted.

This course and practice having been examined before in this brief, we refer to that under this point.

III.

The evidence as to the character of this partnership, the scope of its business and the actual course and conduct thereof came wholly from defendants below and was *in no way contradicted or disputed*.

It therefore became the duty of the Court, to direct a verdict.

Orleans vs. Platt, 99 U. S., 676.
Imp. Co. vs. Munson, 14 Wall, 442.
Walbrun vs. Babbitt, 16 Id., 577.
Arthur vs. Morgan, 112 U. S., 495.
Co. of Macon vs. Shores, 97 U. S., 272.
Merchants Bank vs. State Bank, 10 Wall, 604.
R. R. Co. vs. Jones, 95 U. S., 439.
Pleasants vs. Faut, 22 Wall, 121.

IV.

Assignment No. 2, is to the Court's allowing the plaintiff in error Dowling, to answer the following question:

Q. Did the firm have an account, open or current account, with any merchants in Montague or Whitehall—draw orders on them or otherwise, for the payment of their labor?

The question was objected to as *immaterial*. (R. p. 189.) *not* irrelevant, as in the assignment of error. (R. 142, f. 244.) Objection was overruled, and witness answered.

A. I don't know of anything except with Ferry, Dowling & Company, another firm of which I was a member. (R. 108, f. 189.)

Counsel for plaintiff in error did not think enough of this exception to make it one of the grounds for the motion for a new trial which he made before the Circuit Judge, and which the Circuit Judge denied. (R. 91-92-93.)

Nor does the force of the objection appear greater now.

The question went to the course of business of the defendants firm, was asked on cross-examination, and was matter peculiarly within the knowledge of defendants. The question was both material and relevant.

Irwin vs. Williar, 110 U. S., 506.

And if error, it in no way prejudiced the plaintiff in error's case. It might have been stricken out, and the judgment must have been the same.

V.

The same is true of the question on which assignment of error No. 3 is predicated.

Defendant, Dowling, had identified a letterhead and draft on which were printed the words "F. H. White & Co., manufacturers of lumber," to the introduction of the same in evi-

dence, defendant's counsel objected that the same was irrelevant unless brought to the knowledge of plaintiff. (R. 111-12, f. 93.) The objection was overruled--and rightly. It was admitted from beginning to end that F. H. White & Co. were manufacturers of lumber. They claimed that was their business.

The remarks under IV. will apply here.

VI.

The good faith of defendant in error was not attacked in the court below. It will not be here, we presume. If it is, the court will remember its own decisions, to the effect that not even gross negligence, unaccompanied with actual bad faith, is sufficient to charge an apparent bona fide holder with notice.

Goodman v. Simonds, 20 How., 343.
Murray v. Lardner, 2 Wall, 121.
Brown v. Spofford, 95 U. S., 474-8.
Collins v. Gilbert, 94 Id., 753.
Swift v. Smith, 102 Id., 442.

VII.

In view of the repeated decisions of this court, the last,

Exparte Washington & G. R. Co., 11 Sup. Ct. Reptr., 673.

We call attention to a matter which might otherwise be overlooked:

By statute in Michigan, judgments draw interest. "Interest may be allowed and received upon all judgments at law for the recovery of any sums of money, and upon all decrees in chancery for the payment of any sums of money, whatever may be the form or cause of action or suit in which such judgment or decree shall be rendered or made; and such interest may be collected on execution, at the rate of seven per centum per annum. Provided that on a judgment rendered on any written instru-

ment, having a different rate, the interest shall be computed at the rate specified in such instrument, not exceeding ten per centum."

1 Howell's Stat., § 1597.

"When execution shall be issued upon any judgment, interest on the amount of the judgment from the time of the entry of the same until such amount shall be paid, shall be collected thereon."

2 Howell's Stat., § 7672.

And by Section 1010, U. S. Rev. St., it is provided "Where upon a writ of error, judgment is affirmed in a Supreme Court or a Circuit Court, the Court shall adjudge to the respondent in error just damages for his delay, and single or double costs, at its discretion."

The notes in suit were discounted at six per cent., (R. 123. 126.) and interest at that rate was allowed to the date of the judgment. (R. 83, 87.)

Judgment was rendered December 23, 1886. The Clerk below in entering judgment has not made it draw interest (R. 83) as usual. (R. 67.)

The Court is respectfully prayed to affirm the judgment with interest and costs.

L. D. NORRIS,
Of Counsel for Defendant in Error.